

Johnson Collection

v. 3.

Methods of acquiring Estates
are

1. By purchase 2. By descent

Purchase is acquiring it by any way & it got by descent as by devise gift, execution forfeiture escheat &c.

Descent is by the death of the ancestor, & goes to the persons designated by law as heir

Alienation By Deed

Whenever a man parts with his real prop it must be by a sealed instrument - ^{usually & duly} & this depends upon no stat

If it is merely a alienation of an estate of years &c the law requires not ^{the conveyance} it should be sealed but it must be ⁱⁿ writing -

Transfer of freehold estates - being of record was necessary in addition to the deed, it took its rise in the days of ignorance - it ~~has~~ ^{was} first done on the land afterwards by symbol. After by deed alone the execution has not for a long time done by writing a man's name for they could not write, ^{they signed by a cross} this probably introduced sealing, not that any man's name was known - To make a good instrument now it must be by signing & sealing - & the sealing imports a consideration

Leases for years continued to be by parol until Stat of frauds & perjuries of Chas. 2. but ^{afterwards} ~~some~~ ^{some} leases for years ^{could} be made without writing

² All Executory contracts respecting lands must be written although
it is not necessary to seal them. It must be signed by the party
like leases for years

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² For the history of aliening see 2 H. title, title by extinctions.

a An executory deed does not depend upon Stat & P
though other contracts are not in writing,
so there is great diff between ^{deeds executory} conveyance & deeds executed.

If a man enters into a contract to convey by writing
although the contract does not convey, still the Ct. of
Ch. will compel him to fulfill his contract in character
of trustee to the estate 2 B.C. 442-3

History of the alienation

When the Norman knights were come the other Nob.
of Europe they had no notions of ^{holding &} conveyance of lands
^{page 20.} but the power of disposing of them rested in the chief
was distributed to his under officers. who distributed
to the soldier; & this was done as a reward of ser-
vice, & there were all held at will of the various
barons. When they became more settled, they intro-
duced the Prases, - for to settle ^{& secure themselves} more firmly. & to bind
the vassals. succeeding to this was the lease for
life, & also to secure themselves & to bind the vassals ^{1862 & 1863}
this was long the ^{greatest} estate ^{known} while they wished
to have their estate to descend to their heirs, when
this was introduced - & meant only "heirs of
his body"; "but now it means something more"; but at
this time there was no power of alienation, they was
introduced, so that he might sell part of his estate
say 1/2 if he had acquired ^{himself} the whole became
alien^{ed} if the consent of the heir could be obtained
- then officers was into 1. that he might release his purch^d
est. if he had put to him ^{officers} the heir the alien^{ed} of 1/4 prevent^{ed} estate
then that your Emptors, allowed the sale of the whole?

^a This presents litigation; Which is the object of the law

^b The contracts of these persons are not void, but ^{only} void ⁱⁿ ^{the} ^{eyes} of the law. 2 BL 225

^u After the death of the Deed, his heirs or administrators as the case may be can void his contracts, so also the Ex^r of lunatic (Deed in here vs Ex^r 1504 44, 1 Bl 292, Park 21, 4 Cr 20, But joins in estate can't void it as then man to 6 Co 124. If the Deed or lunatic makes a gift & gives away of such, it binds him, 4 Cr 108-7

^t If the M.S. & deed made by a lunatic may be void for his life time.

^c For after his death she may waive or disagree to the conth, or her heirs may do it after her death if she has not acknowledged the conth during her widowhood but the conveyance or other conth of her is absolutely void. 2 Bl 292, Co Lit 5, Park. 154, 1 Cr 120.

2 In 489.

4/10/1890

see plus P. 100

2 In 307.

He gives him (A) the deed (B) but if it is given upon the
hope of some event hereafter, it is good for nothing, —
make this distinction) Cro E 435, 12 Yer Re 36, Moor
697 Yer Re 29 & 4. Accord to that Cro E 520, 884, the rule
judges decide these different cases of Croke, Moor 642,
19 Am 87, 40b, 245, 2 Roll 24, 9 Co 137, Co hit 16
4 Cruise 27, 30, 9 Co 137c

In all those cases of the delivery of the deed when others
nothing appears as moving it upon the date & the taking of
it up, if the jury can see that there was an intention they will
decide the delivery. These are implied intents.

If there is no intent to deliver there is no deed.

That a deed may be delivered to a stranger as an escrow
or on condition (2 Roll 257) ^{no an deeds} Signing was not necessary by
Ch. sealing was. A now (Cro 9640 Sal 482) contains the
signing answers all the purpose. It can demand the
signing but says nothing about sealing.

2^d ^{in minimum} Reading is necessary if the man ^{who is to deliver} is blind or
can't read. if it (2 Roll 28) is not read (2 Co 3) correctly
(2 Co 10) it is not of effect.

3^d ^{in minimum} The Date are those figures put on the deed
to inform us of the time at which it was delivered
it is the testimony of the deliverance, & as such is con-
sidered prima facie evidence. If the date is in-
correct, the proof of the deliverance at another day is
good (2 Co 5) If there is no date to the deed it does
not void it. — only shew when it was delivered, or if
it is of an impossible date as the 30th Feb. is void

from the ^{date} date considered as inclusive of the day
exclusive is if from the ^{"day of the"} date. Corp 719, 1 Bulp 177

Incapacities

Mansfield Colop. 716.725 declares that sometimes they mean the same thing by ^{meaning from the context,} ~~the same~~ & they must take the he supposes that is easily found out, for intent is "from the day of the date" but from the "from the date"

2^d If the parties giving a deed should give it so that a days diff would void the deed - it is concluded the parties did not intend to give a void deed - construction by the Ct is always as would be most favorable. Co Lit 6. 2 Co 5. 2 Roll 21, July 193, to effirmate the deed

4th Witnesses are not necessary at Ed. to the validity of the deed, i.e. witness instrumental. tho they are necessary to prove certain parts of it, but this may be done by good evidence - some of the M. D. require instrumented witness. Con does. - again deeds are sometimes to be proved before certain magistrates. & it is ^{there} acknowledged to be his deed by alienor before the magistrates, this deed is not only the delivery good, but makes an acknowledgment of the deed, - & under such cases the deed may be delivered as the high-way & when the person has the possession ^{of land} as well as of the deed, the title is good as it can be - the presumption is always in this case that the deed was delivered by alienor, - until the contrary is proved, now when the law does not require the deed to be recorded, it is good if it is not recorded - the object of recording is ~~to~~ to give notice to future purchasers, who has the title - But if the deed is not recorded & some future purchaser buys again & gets his recorded 1st the last deed is the best. - the oldest on record is the best, the law gives a reasonable time to record the deed.

A person who delivers a deed & has not the capacity to deliver it (as a mad woman) & afterwards obtains the capacity & delivers it again, the delivery is good

^{as} The authorities are in general opposed to this reason of the judges
they say the deed of some court is void. 33 35.

21) This is upon the ground that the nuptials are not void but voidable, so that she can if she pleases confirm or void the deed at a ^{future period}. Now when she delivers the deed it has all the qualities of the Eng deed - as signing & sealing ^{supra Delivered} & delivery; it is unrevocable; to make a new deed. but only necessary to confirm. In But in the case of her delivering this deed a second time in this country where witnesses are required ought not the witnesses to sign over again? certainly so; - But no witness must sign to Eng Act, the deed only requires a second delivery. -

But suppose she delivered the deed as an erroneous renewal, when she was incapacitated, & afterwards became capacitated, & delivers the deed again, the deed is not good it is said. - Now at the time she delivered the deed to the 3^d party she was incapacitated & when she delivers it again capacitated, ~~the deed~~ it is not good, the reason is not obvious -

but it is that the first time she delivered, it was void, & it refers back to the first delivery of error. - But, in the 1st case of its not being delivered as an error it was only voidable

Judge don't believe the doctrine of the 2^d case he thinks not

Impediments

A person has capacity but there is an impediment in the way, as if out of paper & is in the deed if it is void ^{if he dies} but suppose the impediment is removed, the deed is then void, for it was void to all intents & purposes ~~in~~ therefore he must make a new deed

The Impediment being the condition.

Fraudulent Conveyances.

The deed was delivered as an escrow, & therefore
the same intent, the intent is removed, & the deed
is delivered & it is good — Difficult to get at the
principles. The principle was not found all at once

Now should he attempt to deliver it again as
an escrow, it is ad to be good. Co Lit 44, Co E 418, 9 Co 95
& Roll 20

The apply to the four cases above

A deed may become void as respects creditors when
it would be good as respects the parties by reason
of there being a flaw

If the deed is made with the intent to defraud
the creditors or purchasers they are void, this regulated
by Stat. & they have either been adopted by the State
Jury Courts or otherwise just like there have been
made.

This law made in the earliest Act of Regent
of Elizabeth

Objects of the above Statutes

Laws differ with regimes explanation that
they have been and construed synonymous as Law^{rs} differ as to them

The object of the Stat. of fraudulent conveyances ^{as it regards Creditors} was
to secure to Creditors the property of Debt^r, so that it should
not pass into hands from which they could not
get it, — Now the Debt^r does not convey away
his land wholly in this case — but retains the profits
— The Credit^r has no specific lien upon the profits as
if he had a mortg., but he has a specific interest
in it that it should not be put out of ^{his} hands
& it is this interest which the law wishes to protect

Now as to the Stat. ^{I think} which regards purchasers
it is different. it is to prevent A from conveying away his
prop to a volunteer to defraud B to whom ^{he} intends selling it -
A thus gets twice the value of the land, - in this case B who
has paid his money holds the land; (~~as the~~ the first deed was
good until the second was made) & even if the purchaser knew
of the Volunteer grant. 2 Ba & Co 2.

When a man has no Creditors & he conveys it away
it is not fraudulent, but it may become fraudulent
Ex. A conveys to B, ~~he at the~~ & afterward sells to C, the same Estate. at
the time of convey to B, he had no design to sell to C, but when he sells to C, it be-
comes fraudulent. Stat says that if a man does so he must pay
his money shall hold it.

Reason. It is a mere inference of the Stat. there
was no fraud until he attempts to sell to a third
person, ~~the~~ then went to cheat the second. Now it
is not really fraudulent, for the last person holds.
it tho it was fraudulent at the time of making the
Stat.

If A sells an estate for its full value to B
& if he intends within the Stat. the intention of cheating creditors
& B knows it B loses

Provision in the Stat of purchasers. That if the
A sells to B & sells to C again, C loses upon the
Max. Provisions est. jure, quod prior est tempore

Rules, as to those conveyances which regard Creditors
1st Rule. The conveyance between the grant & A goes
all ~~attorneys~~ ^{attorneys} under them by Representative as good as
their Rep. If A should convey to B, A's object
was to cheat Cred. the convey is good ~~except~~ ^{except} A in
favor of B. so that the Rep has no rem. 2g. 4 Bar 405

Dear Sir,
I have the honor to acknowledge the receipt of your letter of the 10th inst. in relation to the matter of the
and in reply to inform you that the same has been forwarded to the proper authorities for their consideration.

Very respectfully,
J. M. Smith

I am, Sir, very respectfully,
Your obedient servant,
J. M. Smith

I am, Sir, very respectfully,
Your obedient servant,
J. M. Smith

I am, Sir, very respectfully,
Your obedient servant,
J. M. Smith

I am, Sir, very respectfully,
Your obedient servant,
J. M. Smith

2nd Rule When a man conveys away to one Cred^r with the spirit of depriving the other Creditors the convey^r is good, & the other Cred^r can get nothing this is a principle of Ch. for a person has a right to get away if he pleases a Cred^r has a right to take care of himself. ^{see p. 684}
but if the property is suffered by Cred^r to remain in debt^r's hands the deed is considered fraudulent & void.

3rd Rule Suppose this convey^r is actually made to secure a debt & not in satisfaction of a debt. - it would be fraudulent - - thus if one B C. D. & he got satisfied the whole, & he makes out a convey^r to B. - it is fraudulent - it is not made to pay the debt but to secure the debt - But suppose ^{it is by} ^{as security} ^{for} ^{the} ^{debt} ^{it is} ^{then} ^{well} enough, C may pay B the most money & take the estate - as on if there are other Cred^rs

Reason it opens the door open a door to fraud. but not so in the case of Mort. the other Cred^r may say I will give more than most money

4th Rule The convey^r for an adequate price where there is a fair inference of a ^{go to the nature of the value} ^{shall 3} ^{trust} ^{to the} it is fraudulent - as seen before & it is worth \$5000 & he owes \$1000. - it is fraudulent throw it out for the whole was conveyed by an absolute deed, therefore the Cred^r may come & take the whole & corner can't be carved out to answer the \$1000.

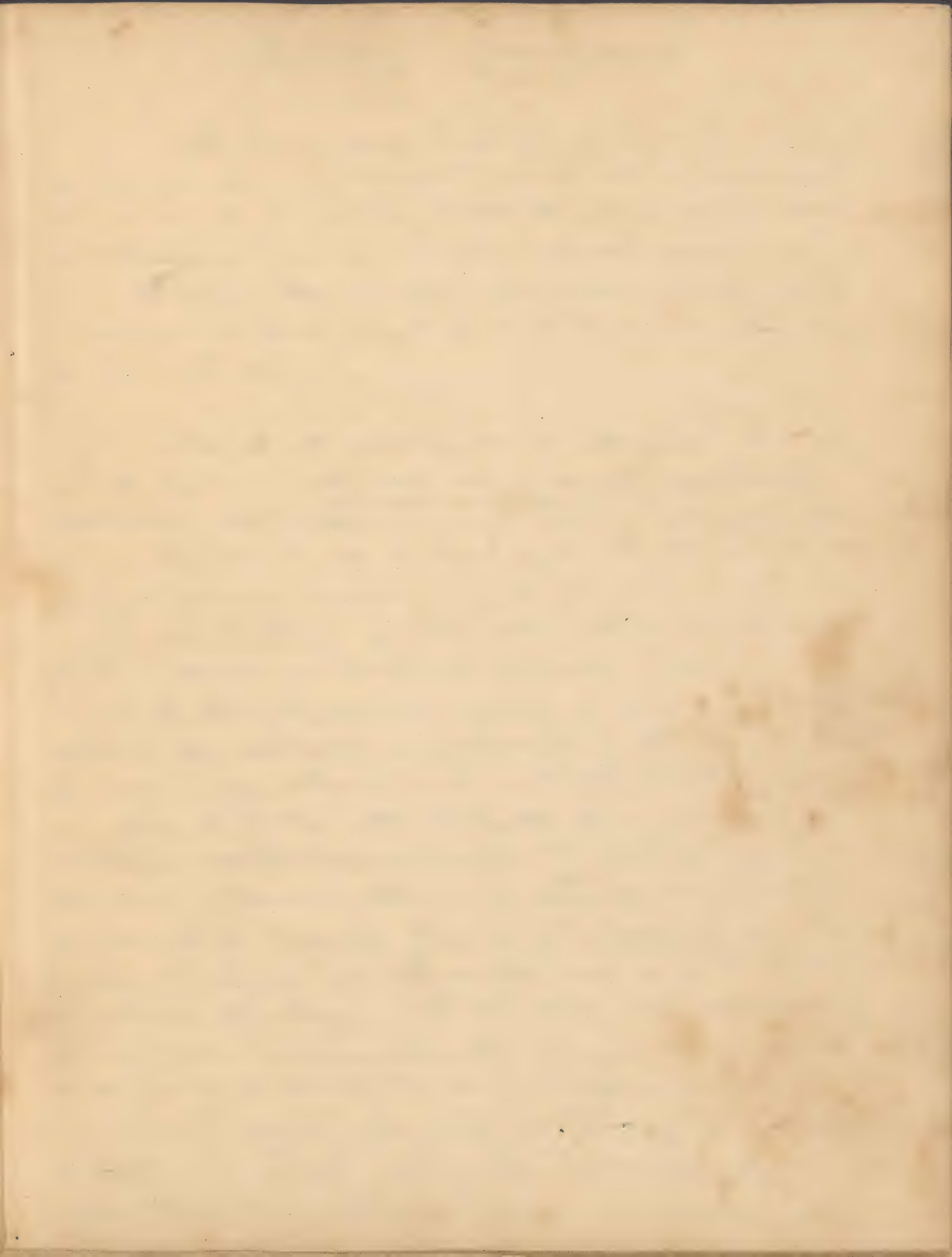
5th Rule The convey^r for a full consideration with a view to get out of the reach of process if the grantee ^{unimpaired} ^{is} ^{it} ^{fraud.} - Liens of the grantee was ignored. 2 B. & C. 602.

6th Rule Potestatory Convey^r not made with an intent to defraud any one ^{unimpaired} ^{is} ^{sometimes} ^{so} ^{operates} ^{for} ^{wards}

some Cred. - it is then fraudulent - at the time he made
the conveyance he could pay all his debts, but afterwards he could
not it is then ^{fraudulent} Volun. deed one fraud as regards antecedent debts - he had other prop.
at the time of the conveyance - afterwards fraudulent for it was gone
by the time the Diff. between Volun. & other from intent is the
no subsequent Cred. can have a Volun. conveyance as fraudulent.
as it is not liable for subsequent debts, though the other fraud conveyance
both for subsequent & antecedent debts.

But if it is a Volun. made without intention to defraud - but
it afterwards turns out that it will defraud some credit
is void

^{the} ~~rule~~ ^{rule} This Rule does not respect any part of the
property which he may have conveyed away and to put it out of the
particular land, it is not fraudulent - but this is
may be why he has other property
is disputed - on the ground suppose a man
is poss^r of both real & personal - the first may be
of the first - real is difficult to be sold, & he con-
veys it so as it to be out of his power, - it is fraudulent -
Case prop^d in two places, one of which estate he has
an affidavit for, he therefore conveys it away, but leaves the other
exposed



Voluntary Conveyances

in 4 Emire 375

That Act is merely declaratory of C.L. & not introducing any of a new Law. Lord Mansfield mentions this in (Case 294) but previous to the making of that Act it was not declared that subsequent Creditors should void an antecedent conveyance.

It means that an actual fraudulent (B & R) conveyance is void as to subsequent as well as antecedent debts, (Case 105) Case 244, 3 PR 540

Now the Act could not make that fraud if it was not so before - the real answer is in the construction of the Stat, that it establishes a rule of law, ^{that the intention was} evidence, the defendant ~~at~~ creditors

That which was a fraud before the Act was so afterwards, it determines the evidence of the fraud

J.R. as to Voluntary grants where there is no intent of fraud; they are not liable for subsequent debts

J.R. By Voluntary grant is meant a provision made without any valuable consideration - this can be proved as well as any other if made with the intention of fraud

Case 1st When this Voluntary Conveyance is made to a stranger without consideration ^{it is voluntary} but if made to his wife & family there is a ^{good} valuable consideration, ~~void~~ ^{not} void. If it is made by way of provision of family it may be proved if the settlor was in debt before he made the conveyance. If the man was considerably in debt when he made the conveyance it is considered as evidence of fraud, & is void. If not in debt - good - Case 375

2^d If made for provision of family & he was ~~not~~ ^{also} in debt - it is made for them non in esse it is void both as to subsequent as well as antecedent debts.

(c) The St says "intent to deceive" it has been said the intention could not be to deceive subsequent Cred^r, but the law says that the intentⁿ is presumed from both subsequent & antecedent Cred^r? for the St goes upon the ground that it always was wrong & subsequent acts go to show the intention — this explains the absurdity

And this punable applies to a7 Eliza. & is the only ground on which it can be viewed as it respects Cred^r. for if he had been indebted when the deed was made it comes under the St 13 Eliza

3^d When ^{made} ~~made~~ those in esse ^{he being} ~~not~~ in Delt but
made with the intent of getting in Delt. it is void both to
wards subsequent & prior Creditors. his intention was
to defraud. - his getting in Delt is considered as evidence of intent
to defraud.

4th When not fraudulent is where ^{it is more} for family ^{to those} ~~less~~

esse & not in Delt to any considerable amount, & without
intentions to defraud.

the case supposes no prior Creditors; but if there are
prior Creditors, the convey is void.

On the Lake of Geneva. Can Vol Beaver Oh go, &
 24th 11, 94, 481, 520, 600, Fall Ca 54. 2 Ves 10, 1 On the ^{last} case.
 L'Hav. ^{has} observed that if there is a Vol^o con by one vessel
 at the time, the be afterwards becomes invalid &
 the VC is for a while it is good, but if there is any
 badge of fraud it is void. 4 Cr 347.

Rule. That if he becomes indebted afterwards
 & there is no proof of his present intent it is good

(a) It says where there is intent to deceive it is void, - this goes too far, it has been ^{sed} held, how he conveys ^{his estate} to B with intent to defraud all the creditors. ^{now here is intention to deceive} but law requires the intent should be to defraud all the creditors - Now that which was innocent & honest fraud is not within the act. it has not the absurdity; - It is void except against Creditors, where 9 Co 11, Cro J 1598. & this principle applies to 27 Eliz, where the conveyance are always void. For if A conveys to B for more value than he then sells to C. & holds; that says the conveyance is fraudulent, why? because he ~~was~~ intends to deceive C., but ^{the} Stat does not allow the exception; ^{to take effect} therefore C has no hesitation in purchasing, even if he knows of the prior conveyance. And the Law protects him. When the Stat was made the conveyance to B was good

(a) It is presumed they are acquainted with the state of his prop^y as it regards the settlement, therefore he is not trusted on the strength of it.

I could not hold by an after title, ^{even} if he paid his money.
but the Stat removes the forced interests - see the doctrine
of full
that fund Comp Case 158 / 19 Co 50, 19 Cas 46 334, April 2888.
Comp 240, 2 Brok Ch 1481 by suffering the purchaser who paid
his money to hold it 12 Chas - The law admits the Int^r to sell
his land there being no specific lien secured upon the
land; & when he sells it for a valuable consideration
the law does not presume a fraud - for he is just as
able to pay his debts ^{then} as he was before, - & indeed per-
haps he sold for that purpose.

These observations made with reference
to a question afterwards to be discussed.

But as I saw it for Mr. Cor^d's one not paidst any more
~~meaning~~^{in favor of part}
 Not for a Vol. Cor^x, unless they are made so extra-
 gently that it is apparent it will depend his end,
 other it is void. — It looked about to my sister
 an estate upon ^{his} wife & childⁿ & good unless we either
 rogant as above. Rem^r to P. No. 10 it is then paid
 when it gets into the hands of ~~Moses~~; Chas & Ben 978, 982-7
 I must

when it gets into the hands of Prokes; Chas & Em 278, 292-7
If the father ^{of husband} makes the settlement it is good
but if limited (2d Reg 779) over to Prokes (1st April 74)
it is bad (2d PM 245, 59, 350.) but if limited over to his own
family, ~~limited~~ ^{Settlements after Mar. 1837} ~~limited~~ ^{if} the husband is not
incumbered at the time are good, a^d Cris. but not
a^d purchasers. — In this case there are no ruling
Crivitors; but as to the Purch; the law is that
as soon as you see a man convey^d afterwards (Cris
1888.) you see him (2d Lev 14 & Cowp 432, 275)
2 Brown 148, 3 Des J 87) selling to a 3^d person, — it is a fraud (2d 275)

Now if this ^{last} ~~last~~ ^{offer} ~~offer~~ ^{is} ~~is~~ ^{granted} ~~granted~~
upon a prior agreement in writing, it is as good

(1) Suppose the agreement was made by parol, he is under no obligation to fulfill the agreement, but if he does fulfill it it is all right.

(2) He must sue the Ex^r & get out an execution & levy it upon the goods in the hands of assignee as executor in his own wrong

as if made before (1 Eq & 154, 1 Vent 193) but the
settle^t must be made according to the prior agree-
ment. (Cro J 494, 2 Ves 308) or it will be good for nothing.

Case, Dippin The agreement was made before
marriage & after then there were articles entered into
to do it - the prior agreement ^{was} perol. Equity refused
to enforce the articles - he entered into articles to
force himself to the ^{marriage} articles (1 PM 52, 2 Ves 504) but
it was like all other contracts made after marriage - void.

Suppose her portion were given to wife
after mar^t, & B^y has held this ^{to be} good. Husband receives
the cash in abundance by wife - her prior settle^t
was not equal to what it should be (2 Ves 18
Chambler 141, 1 Atk 144, 2 Atk 477) therefore it is just it should be
enforced B^y these settle^t is meant, the assignment of prop^y
to wife to enable her to live after the death of the husband.

Settle^t made after wife after mar^t, for the 2 Brn. 9
4 Carr. 393
purpose of enabling her to live separately is good
The intent of power (2 Atk 152) is inferred from
(Chamb 59 of) running specially in Settle^t (1 Eq & 149, 2 Ves 409)
& this voidance of the convey has reference to perso-
nal as well as real estate and on this ground the Settle^t
of deceased person ^{if} may be said; if the property has been conveyed away.

The assignments of estate in trust to live
is not a fraudulents, for it does not prevent the cred^{ts}
from real a^{cts}, for it is in the cred^{ts} hands (5 BR 470

Quest - if cred^{ts} Settle^t is good by St. of Limitation
^{on convey^g made to the cred^{ts} & it was void}
(void to the money,) By the judge it still continues
to be a Settle^t, & therefore the act of fraud can be ground
ed upon this doctrine, if the estate was conveyed to

^a Suppose A conveys all his prop^y to B in trust for his Cred^{rs}, the
Cred^{rs} can compell the performance of the trust, & a purchaser
who has notice ^{of the trust}, can't hold. 1 Ch. Rep. 39

to the man (1 Ch Rep 33) whose debt was outlawed.
(a) A Donative causa mortis, is now a good Creditors
it means if the man dies the donee holds the land (1 PM 105)
if he don't die ^{donee} he does not hold

This is not the only way it which it to a good
at, for it was a fraudulent transaction. — apply to
the ex, where ^{there} is no contrary, it then will pass thro
the hands of Ex^{or} than 377, 2 Ves J 111 who may be sued in his
own name. ^{there may be done} — here is a man's debt
to A B C D, ^{only} ~~at~~ demand I say that they have the land in ^{hand} ~~to~~ ^{has} a
Judgt. say for slander, it will acknowledge the debt
but don't like to pay D, now Ex Ch, will not let D break
in upon the prop. signed A B C D (Ex Ch 149) The above
prop was convey it trust to Creditors. But

If there is any thing left after satisfying the debts of A
B C, they will give the rest to D 2 B & A 609.

A purchased land for money & takes the land
to his child ⁱⁿ A B C D. this is ⁱⁿ not a conveyance to B C D, but
relief will be granted in Equity — they consider it
(Ex J 550, 2 Vern 470, 70 2 Ch Ch 231, 1 PM 111, 807) as fraud
but so a man has endeavored to create a joint-ten-
ancy to himself & son (2 Atk 441, 1 Ves 67) when he dies
it will then go to his son, — But Chan. will consid-
it as the prop of the Father alone, & as such is treated as
a fraudulent conveyance, to change ~~the~~ his estate & put
it out of the hands of Creditors

(c) If the warranty is against "all legal & tortious claims" the War
may recover in an act of Covert broken, all damages & expenses he
has suffered in defending against such claims, see page 25th

Case of McBride the not as Vol. Convey of land

When a man gives a Vol Board to a man, it is certain that the person receiving, Board ought not to answer to the injury of Creditors - - Now when he ^(accidentally) is dead & the estate is to be settled the College calls for his money. but the law holds that the property of the land entitles all the other Creditors are satisfied, but it is to be preferred to all other voluntary debts. but if there is a question whether it is a Vol Board or not, it may be tried at law, & if the Cred^r come in and support him in it it is well - if not then how- ever a bill in Ch may be filed by the Executors against all the Creditors - now this is not a fraud (1 Bro 17, 10th 293, 1 Bro Ch 370, 1 Atk 525) except of that legal kind which operates the other voluntary obliges.

A man gives a Vol Board the mortgage to wife to secure a jointure upon land & the land proves not to be his - ^{the wife accepting} but the widow was ejected, & it is decided that the value of jointure should be made good out of his personal estate.

If Gant is obtained upon such a land (Pr Ch 17) it avails nothing 1 Ver 202, 1 BR 690.

Fraudulent Conveyances agt Marital Rights

A man about to marry a wife seized of real property & she makes a vol convey of it to get it out of his hands is void. Now it is known she is satisfied (2 Ch Ca 49) & the wife?

This has been held to be good, in case of conveyance (1 Vern 410 & 2 PM 354-374) away property to provide for children of a former marriage - now if the husband appears to have got property by her, it avails nothing

Contradictory opinions upon this subject 2 Ver 25
2 PM 332, 2 Bro Ch 345

Question of magnitude which has been agitated in a number of the States on which there are authorities that can be quoted, tho they pretend there are none under the Stat 27 Eliz.

The question is it makes a ^{fraudulent} voluntary conveyance to B A B sells to C for a valuable consideration, can C hold against A's Creditors? - says of Judge Reeve. No that he can only purchase.

Massachusetts may pass of another without intent to defraud the creditors of alienor, without making a fraudulent purchase. *Sparks*

No argument can be drawn from 27 Eliz to support the negation of the question - When there are no creditors it is within the purview of the 27 E, when there are creditors it is within the purview of the 10 E.

If one makes a fraudulent gift, & the gift is made a gift to another for a valuable consideration, & afterwards the first gift is also for a valuable consideration makes a second gift, the gift of the gift shall hold against the second gift of the first gift. This agrees with 2 Ba 607.

But if there were creditors of the time of the 1st fraudulent gift, the creditors will hold against the gift for a valuable consideration, of the gift of the fraudulent gift. - so says Judge Reeve. Lewis says Judge Gould. -

Mr. Goulds Opinions

I do not know how much stress will be laid upon the words of the St. that "all conveyances to defeat creditors are utterly void" undoubtedly they are so as between the creditors & fraudulent grantor but the question still remains, whether a subsequent bona fide purchaser shall be affected by this fraud?

It is objected that "what is fraudulent at its birth can never become good;" but this maxim should have no bearing upon the question. It has been said by Roberts & others that a fraudulent conveyance can become good by matter & post facto. This is incorrect language, for a fraudulent conveyance - one fraudulent in itself can never become validated - it is void. But one which is voluntary is not of course fraudulent & may be validated by matter & post facto. What ever may be the merits of this question - whether such a bona fide conveyance by grantor be void or not as yet. I hold that such conveyance is not in any way affected by the St. - That only contemplates fraudulent conveyances - if the purchaser was not privy to the fraudulent intentions - If then the conveyance be void it must be upon Law principles.

But it is asked if the voluntary or fraudulent grantor has no title in himself as yet? how can one be deprived from him? To this I answer - that many cases may be cited to show that a title may be thus deprived. Previously however I will lay down a rule which none will pretend to dispute: - "A bona fide purchaser relying on regular & authentic evidence of title is always to be protected." By "regular evidence" I mean such as the law prescribes & by "authentic" such as is not spurious: as a sale of chattels in market overt. - a bona fide purchaser of goods in a market overt will hold against the true owner, tho there is no evidence of ownership in the seller but bona possession. So if a bank bill lost or stolen

falls into the hands of some person who conveys it for value such a receiver will hold it as the true owner; - If the vendor of goods leaves them in possession of vendor to be used by him apparently as his own & the vendor sells them without accid. still the buyers will hold them as the true owner. - If the goods are ~~indeed~~ ^{indeed} sold to one who becomes a bankrupt, so that he appears to be the true owner; then goods may be taken by the assignees & be devoted to the payment of Bankrupt's debts. If a man trustee (a fraudulent grantee is in theory of law, a trustee of grantor) sell the prop. to one who has a knowledge of the trust, the latter cannot hold them. because he is a purchaser malae fide. But if he has no knowledge of the trust he will hold as the world. although the trustee had merely the legal title. This is precisely the case of the present bona fide purchaser. The whole Doctrine of Easement Mortgages depends upon the same principle - here the subsequent Mortgagee can take his mortgage to the prior one, if at the time he took his mortgage he had no notice of the ^{intervening} preceding one.

If a bona fide trustee of lands, sell them to a person who has no knowledge of the trust, this purchaser will hold to the legal & equitable title.

All the analogies prove a flat denial of the great proposition. that a person having no title cannot create one in another. All these cases are much stronger than the one under discussion for in them the person conveying, conveyed the property of another. - But it is not so here, for the Cred^r had no property in the subject conveyed before the conveyance.

Another objection is "qui prior est in tempore, potior est in jure" now supposing the purchaser had only as much equity as the Cred^r, the former would be entitled to hold as the latter. But I contend that the purchaser had much more equity than the Cred^r; for purchasers are always regarded

with much more fervour than Cred^r in fraudulent conveyances. Now I say that the bona fide purchaser claim is prior to the Cred^r; that the debt was contracted before the conveyance. The right of the Cred^r commences co-instantly in which he wins the property in Eq^y & before that he has no lien upon the land. Hence the Cred^r not having levied his Eq^y has not a shadow of title. — certainly then he does not acquire one by the act of conveyance to another. I am justified in saying that the purchaser is prior in point of time. Was he not as high an Equity? He has a higher Justice. for he advances his money not on the personal credit of the grantor, as the Creditor did; but on the credit of a regular title to himself. He has then a higher Equity, & is prior in time consequently entitled to hold c^o the Creditors.

The st. was intended to prevent a seller from defrauding a bona fide purchaser. Creditor. — and it is monstrous to say it shall be so construed as to defraud a bona fide purchaser. I would repeat that the st. was intended only to affect the original conveyance to the fraudulent grantor, and did not contemplate a conveyance similar to this under discussion, and consequently this must be void or not upon common Law principles.

Another great maxim is, "that if one of two persons must suffer by the act of a third; he who enabled that third person to occasion the loss, shall be the loser. So also I trust, if the loss be occasioned by the neglect of one of two innocent persons, the rule will be the same. Here the Cred^r had used no diligence — had levied no execution, but have left the property in the hands of the Debtor. Is it not then more reasonable that they should suffer a loss than one who has been guilty of no neglect, but has acted according to the rules of prudence & fair dealing?

The fraudulent grantee has exactly the same right against the creditors as the grantor himself had. for the st makes the conveyance good between the grantor & grantee. so that the allegations that the grantee can convey no title would apply with equal force as if a conveyance by grantor. - for they both have equal title. - I will show this from case. The principle part of them relate to *Jeune*, to 27 Eliz. but the 11th of 27 & 13 Eliz depend upon the same principles of construction & decision. - they have the same operation & this legal effect is the same. - the only difference is that one protects purchasers the other creditors.

Now if both Cred^s & Purchasers were protected by the same st. who would have thought of a difference between the case of one & the other? - The whole scope & intention of the st^s are precisely the same. What difference then can it make that they are in two diff st^s. - that the construction of the one should be diff from the other? - That the fraudulent grantee has the same right & power that the fraudulent grantor had. see *Mol* 477. 1 Rep 332. 1 Sid 133, *Corn* 222, 249. 1 East 95. *Leigh* 436-7.

When the st. 27 Eliz says that fraudulent conveyances as to purchasers shall be void as to purchasers only, & 13 Eliz that conveyances to defraud Cred^s shall be void as to Cred^s only the grantee is in both cases in exactly the same situation. So that this rule will apply equally well as to his situation as respects creditors as it will as to his situation as respects purchasers. The same words which place the grantee in the same situation as grantor in 27 Eliz will have a similar effect under 13 Eliz. - But it is said if the fraud grantee can make a bona fide convey. the Cred^s stand in diff situations than if the fraud grantor had made such convey. - because he (the fraud grantor) would have rec^d a consideration

which the Cred^r might take advantage of. But it seems to me absurd to suppose that when the grantor had conveyed away his land with the express purpose of defrauding his creditors the convey^d would ever be of use to cred^r. Besides this goes on the ground that every fraud^d convey^d is without convey^d and every bona fide convey^d is for value.

It is said that under the 27 Eliz, the purchasers intended to be protected, are not in esse at the time of the fraudulent convey^d made and are not therefore affected by it. - That of course a subsequent convey^d by the grantor would not affect them. But subsequent Cred^r stand upon the same ground as prior, where the convey^d was fraud^d at initio - So that the argument from the non-existence of claims in the one case, & their existence in the other, previous to the fraud^d convey^d does not hold. Besides as before observed, the Cred^r title after 27th levied (so that in fact there is no distinction; for the supposition is that Cred^r has never levied or exp^d) has no claim upon the land. So that all the distinction is that the subsequent claims of the purchasers accrue by deed & that of the Cred^r by execution.

Another ground which has been abandoned by the court was the danger of collusion. But may not the it be equally evaded if the grantor has the power of making the convey^d? In fact the facility of defrauding the Cred^r is diminished by that very circumstance. But though the Cred^r is defeated, still it is favor of a more meritorious claimant.

I conceive that the same construction applies to both the as much as if Purchas^r & land^r were mentioned in both one and the same statute. - And that this is the case is decided by authority 9 Ves 190, 10 Johnson 197. 3 Burr 54. 8 Cranch 134-5 & Johnson 151. The case in 9 Ves was a Decision in Equity, but the same rules apply at law. It was a case of Power of appointment.

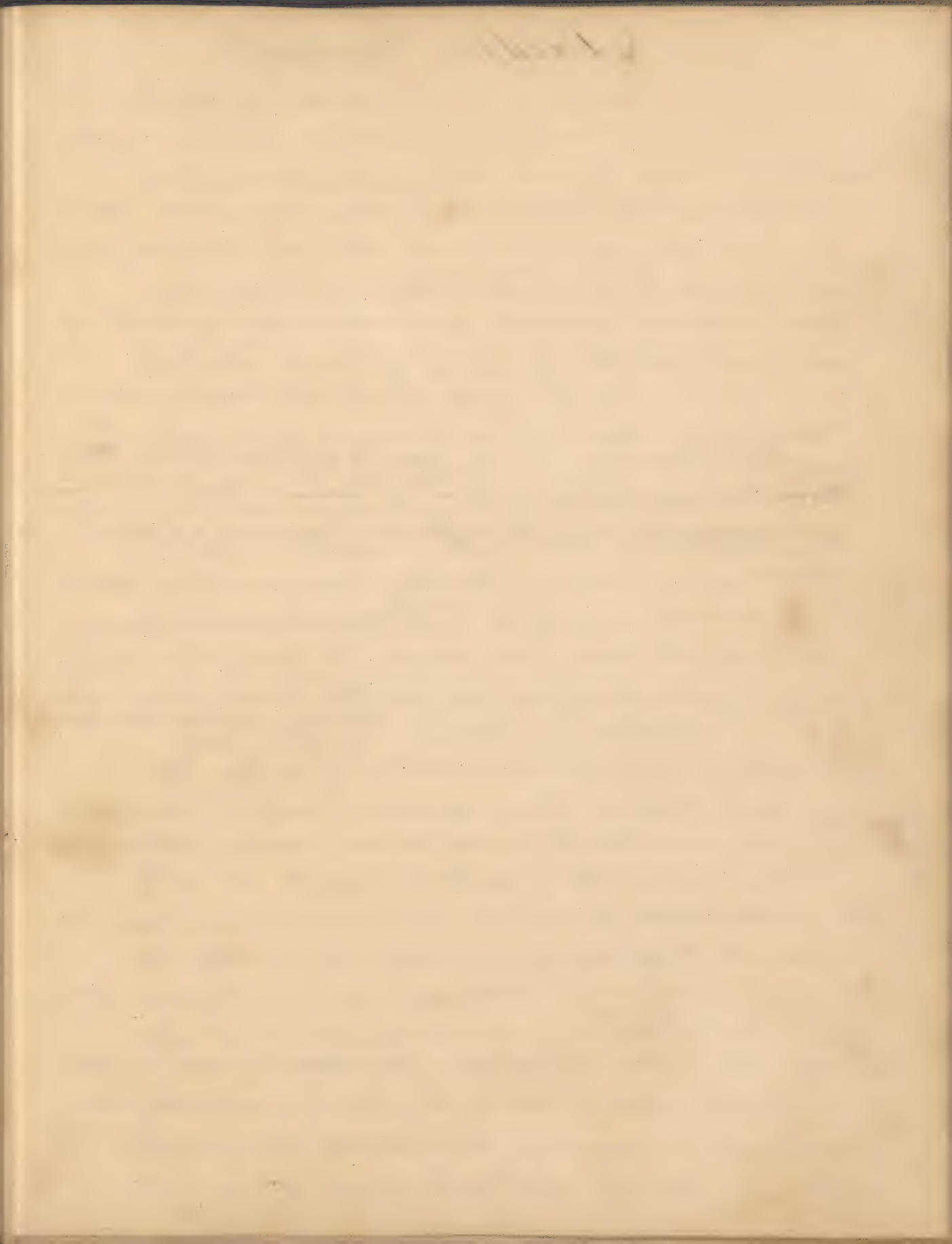
A, having the power conveyed fraud^{ly} to B, who conveyed bona fide to C. It was decided that C should hold against the grant^{or} of A the grantor. - This was a decision under 13 Eliz. . . But it is said that in 27 Eliz there is a proviso. Is there a proviso in one & not in the other? or is there one at all? - or is there one in the Eng. & not in the Conn St. ? - If they are in affirmance of the C.L. can the proviso affect the construction? The rule of construction must be the same as if the proviso had never existed..

But it is said these Sts are in affirmance of the C.L. yet that the St of 13 Eliz is so only to render the fraud convey^{or} void against creditors & not to protect purchasers. This seems to be an absurd objection; for according to all the principles of C.L. the purchaser is to be protected. As I have said the St does not make such a convey^{or} to a bona fide purch^{aser} void, and nothing but the fraud^{ulent} nature (if it has any) can make it void. I have shown I trust, that the bona fide purch^{aser} has not only higher equity than the cred^{itor} but is also prior in point of time; and if we admit the doctrine advocated by our opponents - it will place it in the power of a cred^{itor} to defraud a bona fide purchaser.

I have shown I trust that both Sts are in affirmance of the C.L. & that both stand upon the same principles of construction & decision. and that the convey^{or} in this case not being within the St. must be good on C.L. principles.

I consider the doctrine in the decision of Preston vs. Croft. decided in Conn. Sup. Ct. errors - as being the most pernicious record within my knowledge - I know not how any purchaser can be safe upon its principles; however regular & authentic may be the evidence of his title. and this, how great a number of hands it may have passed, and

however fair and honest may have been the conduct of his
grantor or grantors for many years back. If there was fraud
between the original grantor & grantee, it violates the whole
and any intervening Card^r who can show a claim, no matter
how great the distance, will defeat the title of the present
Holder.



Deeds

(u) If the Warranty is not "all legal & equitable claims" the Warrantee may recover in an ac^t of Covenant broken all damages & expenses he may have suffered in defending against such claims.

Covenants in Deeds

Covered Seeds which are made are of different kinds, to wit.
Coconut of nut & A Coconut of Wavert.

A person ~~unlawfully~~ ^{unlawfully} land usually receives of the best
selling a warranty that he is possessed & has a right to
sell, and will defend him against all claimants.

an action ^{on} assumpsit of deceit may be brought ^{at any time} by Corbett ^{the} agent of Corbett if he suspects or knows that the true title rests in another

But ^{an air} on a current of unwarranted, the Convention can't be sued
until Corbett has been actually ejected

(a) Meaning of a warranty of "all ~~right~~ ^{lawful} claims" is that he warrants against all successful claims - not against tortious claims which are ineffective. *Silberglit* 4 Brn 79.

When a person is used it is his ^{interest} ~~purpose~~ give
warrant to warrantor that he is used - then it is
unnecessary for grantee to supply ^{the writ} but if he gives not notice to
Warr^r it is quite he can't claim c'd Warran^m for
Warrⁿ will prove his title to be good, or allude that it was not properly
supported by sufficient evidence.

supported by evidence, ~~may be shown~~
and chains contain no corroboration
The effect of it has occasioned some controversy
whether can a person claiming under a quit claim could
revoke when a person of grantor, when if the title should fail.

Eng. L. Norton
says nothing
on this point

If it is a large quantity of Hazard, there is no equity in
his reasoning, but as to Quit Claim - for the recovery of the title is known.

In this country Intercommunications drift & indeed
it is considered as an unsettled question

But if it is meant to convey a ~~cost~~^{truth} & there is no
little it falls within the Stat applic. Niles the support
of that for which he now. & he has a claim yet 2 or

Now in Eng, just cross ^{on} river you are in a boat of the end

But in the County ¹¹⁴⁵ diff: for Lint-Plan are frequent

(c)

And this action may be brought against any of the
List-Claimers.

Who may sue?

(a) rules, so if ever a covenant of seisin is broken, it is on executing the deed
because the grantor covenanted that he was at the time of the execution of the
deed seised - If he in fact was not at that time seised, the covenant was
instantly broken.

(2) A person ^{unto} has received a title of lands (say in Missouri)
He sells to another & he sells again - Smith gives Hunt
Claim. Now here it is decided, that what is equitable should
be refunded, ^{is the consideration money in} an act of "money had & received" & act in
an act upon the deed. - Of the grantor should be granted (to)

Who may sue on the Covenant of Redemption &
Warranty as respect Lands?

Rule. If the breach of the Covenant is in the Covenant Dies
life time of Covenor & the Covenor dies - the Executor sues

Case. If A covenor ^{in writ} to B. & B dies, before the
suit is brought ^{on the case that} ~~but~~ B had no title, now
Ex^r of B is intitled to recover. for it is personal
prop-ty. the Damages - But suppose ^{the land}
depends to his heir, ^{in writ, immediately estate} & the breach is subject ^{to the death} of Covenor
the heir has a right of action & the heir only -

But if it's ^{or} long lease, it is always ^{when} in the life
time of R^o ^{and must be sued for by Ex^r} & that is not inconsistent with the foregoing (2)

But if ^{the} on long lease, & there has been no
breach of the Covenant ^{during the life of covenor} to the heir the
heir has a right of action (2 Vent 92, 1 Roll 520
Reason, the Ex^r has a right to personal property in
case of long lease - but if ^{or} after his death ^{alone}
can claim - No matter whether (1 Vent 146) Ex^r
(344, 2 Lev 21) or his assignments in the Covenants
Case of Leases to B. for 20 years. A dies & there is 20th
due. The Ex^r sues, but if ^{for the after by which - continues with the land} the debt was all paid
the heir then sues - But if there was a breach
before & after A's death, Ex^r sues for what was due before the
death the heir for what was due after
Suppose A for a val consd. ^{connected with} sells to B, (A's land continues
is by the side of B's) ^{not to stop} the water course which was in
his land. - now after B's death ~~the~~ stops the water

(3) If covenant assign his farm attached to which is the covenant the assignee
the not named in the original covenant. & tho there be no privity of covenant
between him & covenantor yet ^{he} may sue ^{covenantor} him, & recover the same damages
his assignee might have recovered

(a) claim the heir, (Roll 521, 5 Co 17 C Lit 385, 1 Sal 317)
claims for the court runs with the land.

Court of Warrants runs with the land, it sees
to B. & B with C. & C to D & so. now another claimant
appears under a prior title. ^{Being equated many times} he may sue any of
the covenantees, and recover

Court of Livery court runs with the land for
it is broke at the very time - now this goes to the
Ex^r ~~unquestionable~~

Who may be sued

Covenantee Dies - who should be sued.

A Cove^{tee} with B that he is well served & A
dies, B wishes to sue somebody. The Court bound
himself heirs Ex^r & B may sue either the heir
of Ex^r or A's ex^r - for they are bound to pay all
his debts - & the heir may be sued on the ground
that he is obliged to pay all specially debts

Question important to these States

Here the Ex^r is obliged to pay all the debts
& for ^{that purpose} he has charge of both real & personal prop^{ty}

Now in these states where personal
prop goes to pay the debts it must go first - then
why sue the heir - ^{I don't think he can} because the Ex^r has as much
the control of the real & personal prop^{ty}

The heir may be sued upon the equitable
ground - ^{that} no Vol^{ee} shall be entitled to the
prop^{ty} & assign^{ee} ^{if he} ~~be~~ to the injury of Creditors. -

After the estate is settled & the Ex^r has obtained a quietus, the heir must
be sued, or the devisee in case he has devised the reversion of his estate, but
if devisee has aliened. Covenantee has no redemptions - ^{in this case} must be sued

1 Lev 199
9 Lev 226-1
1 Sam 277
4 Sam 59

Gen 4 Rule 1st When the thing exists at the time & relates to
the premises, answer is bound, 2^d When it does not exist at the time &
relates to the prem.^s he is bound if named & not bound if not named, 3^d
When it did not exist at the time & does not relate to the premises, answer
is not bound, even if named.

Assignees of Covenants

Covenant is sometimes bound & sometimes not when he covenants with assignee. it ^{sometimes} may go to expenses & sometimes not

Covenant sells

1st Case of Leases. Thus A Leases to B for 40 y^r & A & B covenant to pay rent & repair the house. now suppose he does not keep it ⁱⁿ repair - he is liable. suppose he sells to C. is C liable upon the covenant of B to A - does it ^(covenant) run with the prop. it does ^{& C is liable} thereon. in all covenants where the questⁿ relates to the premises & to the value of the prop. it runs to the purchaser. It is immaterial whether the assignee is mentioned in the covenant or not -
A goes out eight B or C for the rent, 40 y^r

2nd A Leases to B for 40 y^r & amongst other covenants there was one on the pt of B that he should build a wall upon Whitton, which is not on the land. B sells to C. - C is not liable - the thing does not relate to the premises in this he is not bound even if he was named in the coveⁿ.

3rd Where ^{he} is bound if he is named, & not if not named

4th When ^{he} is named. - When it does relate to the land but it did not exist at the time A Leases B then to B, & B is to build a wall upon B's land at some future period; the assignee is bound if named & not bound if not named

Genl Rule. When the thing exists at the time he is bound, when it did not exist at the time it does not relate to the premises. it does not ^{bind} relate - ~~even~~ it was on the premises but did not exist at the

at the time he is not liable —

~~He is~~ It runs with the land when it relates to the premises —

2 When he is bound & not named — it runs with the land — & it must relate to the premises — and in all these cases B is Bound as well as the purchaser 5 Co 10 2 L, Cro E 497, 552,

3 When bound if named & it ^{must} relates to the premises & it ^{must} ~~not~~ ^{must} not exist at the time — as to build a barn within six years. & he ^{can't} "breaks" before the sale — C is not bound, but if the six years had not elapsed he would be bound 5 Co 10

But when the Court is to do some collation out which no way relates to the land, it never runs with it

Suppose there is nothing more in a deed than I give grant Ac for a real ^{the} land — it implies a rising of the land, 5 Co 17, Cro E 987 2 Mod 92, Ep. 87,

Suppose ^{the tenant sells} the land — & it sells to B & B covenant to pay 40 L, & it sells the land, even C to whom he sells receives the rent of 40 L — yes the rent runs with the land — but if it had ^{could} ~~run~~ the land to B for 40, he could not get it, & ^{must} ~~run~~ now Suppose it dies who ^{would} get the rent land? why the heir, so with the rent, since the land is leased Rent is real estate & like it descends. But if the land had been leased for a sum in gross, it would have gone to ^{the} ~~the~~ ^{as best prop.}

Consideration — Where there is no consideration you would be led to infer from the looks that the lessee would agree only to the grant & nothing could be recovered. — but we know that in

(2) In case ^{prop³} ~~land~~ is given away without consideration, it is
liable to the creditors of donor even when in the hands of son, for
every man must be just like he is countful.

be no doubt but that the deed passed the legal title to the grantee
— as the use by the Act adopting the idea of the presumption
alluded to rests in the grantor — Of this I have just made
of considering the subject it is apparent that this doctrine grew
out of the state of society in Eng. & has no reference to what
be applicable to any other country under different circumstan-
ces — But it became an established rule & of course when the
Stat of uses was enacted giving to the cestui que use the legal
title, such conveyances had not the least operation: for if it
might be said that it transferred the legal title to the grantee
the Stat immediately transferred it back again to the grantor

It seems to me that in this country no presumptions can
arise of any intention in the grantor that he should be
entitled to the use, — and upon general principles I en-
tertained no doubt, but that a grant of land without any
consideration ~~is~~ ^{is} good & valuable attended with the delivery
of the deed as much vests the land in the grantee, as a gift
of a house attended with a delivery vests the prop of the house
in the donee — I considered it therefore as a sound prin-
ciple that in contracts executed no consideration is ne-
cessary to vest the title in grantee — & it is as universally
true that a consideration is necessary to give validity
to executory contracts.

Of Exceptions in Deeds

If there is ^{nothing} ~~any thing~~ you would except when making a
contract it must be, in the deed — & if a man ^{has} ~~owned~~
a crop on the field & he would sell it, & sell evidence
won't preserve it, for it goes with the land

1st Now when any thing is reserved the law allows every thing
necessary to enjoy that reservation — & a house reserved
on the land ^{which he gave} ~~the land~~ he has a right of ingress & egress

to the house (4 Mod 11. Co lit 47) but if the house should
be burnt down he has no claim to the land on which it stood.
Now the ^{2^d} ~~the~~ ^{the} ~~itself~~ ^{may} ~~contradict~~ ^{the} ~~deed~~ ^{the}
exception is void. & a man conveys all his land left
in the town of it & he has no other land left in the
town of it, is granted by C.L. but if he grant a
house & shop standing in such a place (2 Roll 454
Hob 170, 10 &) & then accepts the shop (Co lit 57) the excep-
tion is void.

3^d The exception may be void from uncertainty
but it seems to the Judge that this case, (A grants
20 acres except one as found in the books), to be
singular ^{that the exception is void for} now here they grant & grant a
tenement in common according to his opinions

Most all the conveyances mentioned in the
books are unnecessary for us to attend to, they
being out of use for the most part even in Eng.

Leases are now in use - there are no
particular words necessary to convey a lease

Partition is used for nothing to be said
about it in title we come to tenements in common

Lease & Release, useful, it makes a lease
to B & then releases it, ^{for me & my heirs} ^{which gives to the title} it grew out of a maxim
of Eng. L. that every person was necessary to convey
land. by this Lease & Release they avoid it - because
if a man has an interest in a land every is un-
necessary - now by gr. A Lease & Release to B. then
to his ^{intest} ~~an~~ ^{proprietor}, therefore every of person is needless
so he gives a Release which completes the title.

~~Baron & Lall~~ - This on the face of it ap-
pears to be nothing else but a mere sale

Originated in this; when men originated because they
could not devise their lands, but when convey'd was
to use - it (the use) could ^{then} be devised

Now a sole agreement to a covenant that the man
shall have ^{the} land, then he will compel ~~the~~ use
of the land - Now if convey to G. to the use of
J. now J. may sign to the use of G. thereby
that it ^{27 & it was decided that} ~~would~~ the title ^{pass} pass'd with the use, now
how does this operate, why it transferred the legal
title to G. now let G. convey the land to G. by
a bill of sale the ~~it~~ is devised to the use of G. ^{that}
that he transfers the title to G. - ~~again~~

These estates for uses ~~are~~ ^{are} ~~not~~ ^{are} ~~in~~ ^{are} ~~the~~ ^{are} ~~country~~ ^{are} ~~as~~ ^{are} ~~they~~ ^{are} ~~have~~ ^{are} ~~little~~ ^{are} ~~or~~ ^{are} ~~nothing~~ ^{are} ~~to~~ ^{are} ~~do~~ ^{are} ~~with~~ ^{are} ~~this~~ ^{are} ~~country~~ ^{are}

This use is real property in the man who held
the use, ^{but} it differed from real prop in the pt ^{that} it could
not be forfeited for treason. & If the person who was used
to the use sold it, ^{he} deprived certain use of his land.
they were inconvenient, therefore the Stat of use was
made which vested the ~~possession~~ title in him to whose use
it was held.

From this doctrine of the trust estates has
a system of Jurisprudence arisen in Europe
which is very extensive, & has been raised by the
of Chancery, totally unopposed by the Courts of Law.

Qualities of a Trust Estate

^{the} ~~is~~ ^{is} ~~now~~ ^{is} ~~entirely~~ ^{is} ~~managed~~ ^{is} ~~by~~ ^{is} ~~equity~~ ^{is}
it ^(Trust estate) must be created by writing & with the ~~now~~

(2)
by applying to Chancery, who will then vest it, & the title then
of course becomes vested in the husband

Avoidance of Deeds.

solemnities as real estates & it is liable to most of the charges that real estates are, it is not liable to dower tho it is to curtesy which mars the symmetry of the law it is appeto, descendible, devisable, & may be mortgaged.

Trust estates are given usually for the good of wives for if it was given to her, the husband would claim, but it is given to her in trust of another, & he then (a) cannot get hold of it without her consent; she can always get the title vested in her

Again it is given for the benefit of a child should the child apply to ^{Ch} to have the title to be conveyed to ^{him} ~~him~~ Ch will not accede it he is unfit to hold it

Ch assumes the power over all these trust estates & they order them to be sold for the purpose of paying debts & Roll 740 1st 591. & PM 640

It is common in ^{for a man} ~~Ch~~ conveyance that any his estate in trust for children, now when their children are of age the Ch will order the titles to be vested in them on application if they are proper persons to hold i.e. not non-compos, idiots or the like.

If a person holds prop in trust for another & he ~~parts~~ ^{conveys} with to a bona fide purchaser (2 Bl 235 to 242) the bona fide pur - holds - even the person to whom the title & possession - if notice of use was given to hold out

These deeds may be avoided by matter ex post facto or by altering the deed - whether it be a material or immaterial place the deed is utterly void - tho as regards the immaterial part is a pt of policy when altered by the person holding deed but if a stranger does (11 Co 24 Carl 626.) does it tho not void unless altered in an immaterial

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place & this regards lands, &c.

Breaking Seal voids the deed. This is old law
Coker says if a deed ~~is~~ ^{is} into the Ct & the seals cut off
the seal the Ct (15 Co 23) will allow it to be a deed
(1 Roll 40) after it has got into the Ct, notwithstanding
the indignity offered by the mice of causing
the deed to appear in Ct without a seal, but if
it is brought in ⁱⁿ without the seal it is consid^{ed} as an indignity, & it

Executions

By the Ct of Ez there was ^{nothing} ~~no~~ as to taking
the lands of execution, except by a writ called "Breve
facias" which indeed only took the profits of
the land — & if it might own land & lease
it out, if it had not leased it, it might have
been taken, ^{in the profits} but this writ ~~is~~ now transfers
the rents from A to C. —

No ~~that~~ ^{has} been made which allows
creditors to take the emblements from the land

Afterwards a ~~that~~ ^{was} made which allowed
the taking, half of a man's lands & hold them until
the debt was paid this was prised off in a
writ call "elegit"

Now when he was dead all his lands
might be taken to pay certain debts, but even
here nothing was said about prising off.
Upon the ground the Judge supposes — that they
had been so long accustomed to the Breve facias, that it became
a general principle to take the profits alone for the debt.

On ~~the~~ ^{the} ~~land~~ ^{land} for years, either the whole land
might be taken & prised off or the land might

sold under A execution - this is Eng. Law

But we have Stat of our own which regulates the whole & the mode of treating the land is various,

Now in this country, ^(i.e. Eng) the land is sold of A. L. so much as will pay \$100, ^{or less} & this is put on record which constitutes the title of the creditor to the land - for in such cases no deed is given.

In other states the land is sold at public sale & the avails if it is then applied to the paym^t of the debt.

~~Execution~~ is sometimes levied on personal prop^y, ^{which} it is then sold at the post & the debt is paid off with the avails

~~A~~ Rece facias can not be awarded by our Stat but in those cases which our Stat do not reach, it may be issued by C. L.

And as to an estate for years nothing is said about it in our Stat. Therefore take it by our Sheriff or ex^{ecutor}. Now when nothing is said in Stat go according to C. L. & buy your Rece facias Estates for years being nothing but personal estate they be treated as such & either the execution, or Rece facias may be levied.

Alienation by

Devise

Real Estate is acquired by Devise. Which is a disposition of property, made by the owner, to take place after his Death, & previous to his death the devise is of no consequence, it is no conveyance.

The Terms "Legacy" & "Devise" are often used as synonymous, but they are not so strictly speaking. For a "Legacy" relates to per. prop. "Devise" to real. so "Testator" & "Devisor", the first gives per. the second real property.

The Effect of a Will upon per & real prop. is very different. as it regards per. prop. there is no title vested in the legatee upon the death of the testator, but the legal title in the Ex^{or} — a beneficial title vests in legatee after the debts are paid, but not until then. And even after the debts are paid, the legatee can't maintain an action of Ex^{or} for the legacy. — This is a dispositive point — no no no

But as to Real prop. the legal title immediately vests in Devisee, upon the death of Devisor. & there is no intermediate title.

By the ancient E.L. the estate vests in the devisee immediately; & unincumbered by any debts whatever. But by Stat^{ute} of Eng & most of the U.S. these lands in the hands of Devisee are made liable for specialty debts & may be taken on Execution, but the Devisee is not liable, it is only the lands which are in his hands & they may be extended for the payment of the debts after which they go to Devisee.

If Devisee has sold the lands. they are no longer liable, but by the Stat^{ute} Devisee himself is,

The Ct of Chan. has differed here from the law, & has assumed the power of compelling the purchaser, in case he knew of the claims, & creditors

to convey the lands to them, & then look to the Devisee for his remedy.

In an act of the lands. The devise is made Deft, but Jdgt is rendered wth the lands, which are ordered to be appraised off & extended for the payment of the debts of Devisee.

In most of these U.S. provision is made to render these lands, liable for all debts, but they are not liable until the test. prop. is all expended.

In some of the States. the lands are sold at residues. In others they are levied upon. & if they have been appraised off during the life time of Devisee the Ct will grant an order for sale. In these Eastern States the Ct issues an order for the Ex^r to sell the lands & pay the debts. If the Estate is insolvent the lands are all sold. Scias if not. — So properly speaking the Ex^r is liable to pay all the debts.

No legacy is of any effect ag^t Creditors — for a man must be just before his is — but after the debts are all p^d then the will of testator is to prevail.

1) History of Devise. The first thing we know of them is that they were in use before the Norman conquest. & in very general use. The wills of the Saxon monarch several of which are extant are a sufficient proof of this fact. an instance there is to be found in the books, of one of the Monarchs making his mark, as a his signature, being unable to write, when conveying his lands by Devise.

But at the conquest on the introduction of the feudal tenures, the aliening of lands being inconsistent with those tenures, any entire restraint was put on the power of devising real property. (Fov. De. 3.) A few places only were excepted from this restriction. by the force of local customs, of particular places, that were not subject to military tenures, or on privileges granted by the first Mon.

But long before the Act of Wills of 32 Hen 8. a practice prevailed of conveying the lands, when the fee could not be devised, which practice became an universal custom. For during the wars between the Houses of York & Lancaster; the lands of either party became forfeited for treason as the other prevailed, for then scarcely they convey'd away their lands to some indifferent or low person who would not be noticed, to hold to the Heir of the grantor or some other person whom

Devises. ~~What if~~ } should name, then these uses were devisable, by which means
the owner was enabled to make provision for his family in case of his own death.
And the Ct of Ch supported these devises

When lands were thus conveyed to one to the use of another all at relating
to them as this, as the life was brought in the name of certain year trust.

In the 27 Hen 8, a St was made putting down these Uses, by vesting
the title in the man who held the use. So if J.L. conveyed lands to P.M.
to the use of J.L. the title immediately vested in J.L.

As people had been so long in the custom of devising their lands by means of
the Use. They became exceedingly uneasy under the Restriction, which
uneasiness produced the St of 32 Hen 8: giving power to all persons
not disqualified & "having a sole estate or interest in a fee simple
or seized in fee in coparcenary or in common" to devise them according
to his own free will & pleasure. But no other than those as provided
for in the St could devise, which is the reason why joint tenants, & tenants
p'curtor vie cannot, as no one could devise by C.L. & they are not provided for.
& the wife has no dower

Most of the Sts of the M.C. provide that every estate that a man has shall be devise-
sable. So that a joint-tenancy is devisable with us. Some say that "what
C.L. calls joint-tenancy shall be considered tenancy in common therefore there
is no such thing as survivorship under these Sts.

All the Sts seem to intend to grant a power to devise all the lands a man
has a right to. With one or two exceptions, one of which is Maryland, which
requires that Alienage should be removed. But in general the two great ques.
regarding joint-tenancies & p'curtor vie must be treated differently
under our Law than under the Law of Eng.

Our ancestors came to this country after the 32 Hen 8.

The words of the St. "all persons" has created much difficulty as to the
question whether Infants, lunatics & Idiots &c could devise, but surely they
could not & this

The 1st of 32 Hen 8 was made to give power to all persons who had a right to devise ~~per. prop.~~ to devise real. & it does nothing more, so that all persons who had power to devise by L.L. have under the 1st & none other & it meant to put real prop as to its capacity of being devised upon the same footing as ~~per. prop.~~

The governing Maxim of Wills is, that the Intention of testator is to prevail, so if the intention can be proved, the construction of the Will is clear, when that intention is consistent with the Rule of Law. But if it is not consistent with the rules of Law it is of no effect. i.e. the thing intended to be done must be so consistent. But as to deed if not made according to the forms & rules of Law it is of no effect, whereas a Will is good, if the thing to be done is legal. If a man gives an estate to "J. & his heirs" it is an estate tail, by Will if the intention to create an estate tail is proved. Lest by deed, for the Law requires the words "to J. & the heirs of his body" to create est. tail.

But if a man should attempt to entail ~~per. prop.~~ as a library, by a Will even it would be good for nothing, for it is contr. to law.

The Execution or Publication of a Will conveys nothing until the death of testator. Lest with a deed it takes effect immediately.

A Will is always in the power of testator which is the reason why a second Will always revokes the former.

The Operation of a Will is different as it regards Real & ~~per. prop.~~ as it regards Real it passes only the lands which testator possessed by him at the time of the publication of the Will.

But as to ~~per. prop.~~ if the words of it are such as will convey all, it will convey all which he has at the day of his death even if it is as much again as he had at the publication.

If the will should be republished ^{by the testator} it will then pass all the real estate which the words of it will convey. It speaks from the

Devises } Day of its republishment.

But if the words of it were "I give & devise all my lands lying in the town of A." & then several years afterwards republishes, it will pass all the lands he may have purchased in the mean time which lie in the town of A. But not what he has purchased in the town of B.

Quantary Devises. There is such a thing as giving an estate in opposition to the principles of the C.L. because the C.L. has established it to wit by Quantary Devises. — These are when a man devises an estate to commence in futuro — which can't be done by deed. — They are somewhat restricted in their operation, for one can't be given to create an estate to commence so long in futuro as will create a perpetuity.

An estate in fee can't be given upon a fee.

A life estate can't be given by deed in an estate for years because a life estate is the greatest. But that can be given by Will. If J. has an estate for years say 100. he can give an estate for life out of that by Will.

The system of Engl. Law as it respects real prop. not being liable for debts rendered it necessary that some power should be given the owner of it to alien for that purpose this was done by empowering him to order them to be sold by means of a Devises; & the person then Designated in the Devises sold under that power & convey'd a title in the name of his Devisor. This was the origin of the Practice of Executors selling the real prop. to pay the debts, but in the above case he w^d not as Ex^r but as Trustee.

Some States have adopted this rule by Act & have given power to the Ex^r in all cases to sell the land to pay the debts on failure of personal.

A Question arose under the Act of 32 Hen 8. whether an estate held in remainder or reversion could be devised. Ex. J.M. has an estate for 20 years of which J.L. has the Re^v. It is now held that J.L. can Devise this estate, but if he held in the right of another he could not Devise, but the reversion of J.M. is the reversion of J.L.

Q In such a case the Will must not be declared upon general "a, that
the testator made his last Will" but particularly "that he made his last will
of such a nature" Now D 18.

1782/1787

Devises } As to the Form of this Instrument (Devise) no particular one is necessary. If the provision is such as to vest the estate after the death of Devisor. it is a will - and as such intent is to prevail. Ex. I should use the terms of "you grant sell &c" in the instrument, it would make it a deed - but if it should appear to be substantively a Will, so that the estate was to take place after his death, it would be a will notwithstanding, the terms used. 1 Ch Ca 248. Finch 195
3 Keble 310. 1 Mod 117.

Will may be made with reference to a prior Will in which case that first becomes part of the Will. Ex. I. gave the rents &c due on the lands mentioned in certain deeds. These deeds mentioned then become part of the Will. A case of this kind arose. a man ordered his Ex^r to pay £40, to his brother Phil. as he should find pointed out in a deed in a certain draw. - the deed could not be found. The ques. arose whether the Phil had a legacy given them.

Pro 9144. 2 Atk 273. 10 W 520

(V) Last Will revokes the first - this must be understood with some limitations - for if the 2^d will refers to a different piece of prop. it does not revoke the 1st but both are good. - all that is meant is that the latter must revoke the former, if it is inconsistent with the former. 1 Show 548, 553

(C) But if a difference appears between the two Wills, the latter operates as a revocation in a certain sense. The ques. arose whether the revocation was in toto, or pro tanto only. Case of Bachelow made a Will and gave his estate to his Nephew. & afterwards married. He then made a second Will & gave his Wife a life estate out of his estate. The court held, the 2^d revoked the 1st pro tanto only.

(4) Codicills - are alterations of the Will, & revoke pro tanto only. A Will operates as a Codicill in no case except the case above (C) respecting the settlement on the wife.

A remarkable case arose. In which the Jury found that testator had made a second will diff^t from the first: but in what was the diff^t

Devises. } Jurators blunders ignorant. The Ct. B. held it as a revocation. Judge
reversed in K.B. & this affirmed in 1 Ves 187. 2 Ves 277.

St of 32 Hen 8. required that Wills should be in writing. under which
requirement great looseness as to Wills obtained - A letter written as such was
held a good will. In another case a Will which was never seen but di-
rected to be drawn up by ~~testator~~ was held good.

Whether Contingent Interests could be devised, ^{as yet} has been disputed
for it says all the lands of which a man was seized could be devised. -
Some late Decisions have held that they could be devised, on the ground
that the Cor. Int was seized as much as it could be. 1 M & L 30. 3 L
1197. Case. A devised his estate to his son B, & if B died before 21st &
without issue, it should go to C. so that C had an estate unless B died. -
But B sickened & devised this contingency to his son D. & died. then B died
under age & without issue. - the devise of C was held good.

Estates per autre vie, were not devisable by St of Hen 8. but they are made
so by subsequent St 29. Ch. 11. Sec 11.

The St of Ch. 2. has been adopted substantially by almost every State in the
Union, & as it was adopted after many Decisions were made upon it. these
Decisions are of course adopted, or mention would have been made of them in our St.

The Requisites of St of Chas. 2^d

1st All lands devisable by St of Hen 8. or by custom are by this St
must be devised in writing.

2^d The devise must be signed by devisor or some person by him authorized
in his presence.

3^d It must be attested and subscribed by witnesses in the presence of
devisor, - attested that the devisor signed it

4th The number of witnesses must be three or four

5th They must be credible witnesses

Devise } The whole Will must be present at the time of Devisor's signing it, & of the attestation. 3 Burr 1173.

A Will made in foreign lands must be made according to the forms required in the country where the land lies. Ex a man in the East Indies devised lands in Eng. the devise must be according to Eng^l forms. 2 Bro 291-3.

A Man has not only power to order his land to be sold, by Devise - but to devise power to another man to ^{Devise} ~~sell~~ them. but in this case they pass as by the will of first Devisor. As A grants the power of devising, certain of his lands to B. B devises them but they pass by the will of A. 1 Bro 740, 2 Wils 280 285. 2 Ves 279.

Requisites of a Devise. Comments of the Judge

1st That "it must be written" means no comment.

2^d "It must be signed by Devisor" Quest. What is meant by signing. It is the outwriting the name of Devisor. But it now is held that if the name of Devisor is found in the Inst. in his own hand writing it is a good signature, even if it is found at the very beginning as. 3 J. L. 204.

And the Judge thinks, that if the signing of his name is found, signed by authority only, it would be good, for what was done by the agent is done by the principal.

But as it regards per pass. The Law does not require witnesses to the Devise. So if a Will is found in the devisor's hand writing it is held good even if there is no signature 3 Mod 219. 3 Lev 1. In this case there was a sealing as well as a signing at the top & it was held by three of Judges that sealing was signing, & by the other three that it was not.

The case came before the Ct & was exploded as to the doctrine that sealing was signing. 2 Sha 764, 1 Wils 313.

The signing at the top is not always suff. Ex. citation is in the case of a man's making a Will beginning with "I John Stiles" but afterwards attempted to sign it but was unable to in consequence of sickness he made three trials. & in the last died. The Will was held to be lost. for from the attempt to sign, it was apparent - J. S. himself did not think

Devises } think the will finished Long 241. R. v. White.

3^d "It must be attested to" Quere, what do the witnesses attest? They are merely instrumental witnesses. & the Judge thinks they attest the single fact of the signing — but it is thought by some that they also attest the sanity of the Devisor. — But it seems these witnesses are often called upon to attest the insanity of Devisor at the time of his signing, which would not be very the former prin. correct. — Therefore they attest the signing only.

It is now held suff^t. that the witnesses attest the acknowledgment of the will by Devisor. so that now the declaration of Dev^t that it is his hand writing is enough for the witnesses (2 OW 505) to swear to On Ch 144, 2 Ver 459, 3 OW 253, 2 Atk 142.

It has been a question much disputed whether these question witnesses should be present all together or not. It does not require it. But they must sign in the presence of testator, i.e. in such a situation, as that the testator may see them if he will, it has been held good that seeing them thro' a broken pane of glass, when the person was in such health that she could not leave the air of the room. but was brought in a carriage to the office window. If they were in such a situation when signing or witnessing the will as that test^r could see them it is of no consequence whether he does see them or not. Quere suppose testator blind. Judge thinks, it would be suff^t if he could see them if he had eyes.

Witnesses were sent down stairs to sign it & the witnessing was held bad at the done by the order of testator.

1 Sal 295. 1 Brown Ch 99. East 77. 1 Show 59, 1 OW Broderick v Broderick, 1 Show 258

Deeds { The man pointed immediately upon the signing of the will & while he was in this state the witnesses sign'd. Inst. was the attestation good. - Decided not in Right & Price Doug 241.

Reason why the witnesses must sign in the presence of testator is to prevent the obtusion of another & feel it upon him. Doug 241.

1st Case The witnesses must sign in the presence of testator, one or three or more. A Case occurred. In which a man made a Will of his lands, attested by two witnesses only, A & B. and afterwards made a codicil to which he had witnesses B & C. one of them a witness who signed the said Will. The codicil was on a separate piece of paper, which had it been in the same piece with the Will there would have been no ques. The Law was, is the Will attested by three witnesses? It was held not. I turn on the point. That the paper was separate from the Will. Caith 35. 3. Mod 282. 1 Show 58

2^d Case. A made a will, wrote it himself sign'd & read, it but ~~had~~ no witnesses being ignorant that they were necessary. afterwards he made a Codicil which in the presence of witnesses he declared to be for a Codicil to his last will &c. Which Codicil he had duly attested. The Will was not present, so that witnesses could not identify it. ~~attestation~~ held bad. Pr Ch 240

3^d Suppose the Will almost but identified, as being of such a description & lying in a certain drawer, The authorities allow the attestation of the Codicil to be good as to the Will 2 Vern 597.

4th Case. A Will was found not witnessed & a Codicil made up with it in the same sheet of paper which was duly witnessed. The witnesses were called & testified that the Will was present at the time they witnessed the codicil, but it was not unfolded in their presence, in Com Res. held to be bad. It being not sufficiently identified.

4th Case LD B Will was written partly on one side of a sheet of paper & partly on the other & there he signed it. After this the Codicil was written which reached to the bottom, when LD B also signed it but there was not room enough for the witnesses. so the acknowledgment was

Devise ² was taken on the 6th. Held to be well executed, 1 Bar.

~~The~~ ^{He} made a Will & gave small prop. but did not execute it. afterwards he made a memorandum & gave per. prop. - the Will was present & contemplated at the time of the attestation of Codicil. Execution was held good for the Will was well identified that they could swear it was the same will.

So that the Verification of the Will is all that is needed to undo the will well attested at the time of witnessing the Codicil 1 Bar 549.

All the Witnesses must sign in the presence of testator.

In many of the early decisions on this point it was held needed that all the witnesses should be present at once. But since it has been decided that the acknowledgement of will by testator is suff. this has been held unnecessary; but all must sign in his presence, 2 Ch Ca 109. Pirch 144. 2 Atk 197.

The Witnesses must be Credible. What is meant by this has been much disputed both in Eng. & the U.S. & is of consequence as it has caused so much litigation.

The quest. arose in the case, where a man made a devise of his land to pay his debts & had cred. as witnesses to the Will. Quest. Are these cred. credible witnesses. Lee supposed they were not, the other Judges that they were. Cambridge sided with Lee, in another case. afterwards Mansfield decided that they were 1 Bar 444. So that we find authorities are about balanced.

The quest. has arisen three times in this State & since the decisions of the inferior Courts that they were not credible has been reversed & has just affirmed.

It is very difficult to give a meaning to the word "Credible" which will comport with the Act & not render it superfluous. It does not mean "competency" for this is required of all witnesses. & incompetent persons are not witnesses - as lunatics, infamous, or wanting of discretion. All that the Q.L. means when speaking of the credibility of witnesses is that they are not interested. If an old man makes a will & gives his friend P.B. a legacy & P.B. witnesses the will; his interest is objectionable, now the quest. is does this expectant interest disqualify P.B. — If J.C. had got into a law suit about his land his son would be admitted as an exid.

Devisee. Reg. { even, — the son interest in this land is expectant for as soon as the old man dies the land becomes the son who is heir at law, so that this expectant interest is no disqualification, therefore J. is a witness were J. his ignorant that he was a legatee there would be no doubt but his attestation would be good, unless it could be said that being an old friend of J. he might expect something.

Now what does he witness? why that J. signed the Instrument & admit for the moment if you please that he attests the validity of J. also. — Suppose J. called into Court immediately, could he not swear to these circumstances? surely so. Then he could witness the Will. Com Rep 91. 1 L Ray 509. Carth 314. 2 Str 1258, 1 Bur 414. 2 Mansfield's opinion here in full. 1 Day 46. which has the instance of it.

The Publication. is sometimes said to be a requisite. By which publication is meant some act of notoriety by which Devisee acknowledges the Will to be his. It is believed that not a case can be found laid down in the books where all these requisites are gone thro' with but that it was considered as duly published. A man said "take notice" as he was about to sign it was held good. 3 Atk 156 & 51. Pow 50 to 57.

Proving the Will. The will must be proved before the Court — Now if all the witnesses were to sign in the presence of each other & of the testator. One W. would be enough to prove the Will for he could then swear it was signed by the testator and all the Ws. Less if they sign only in the presence of testator. for then they must all prove it.

If the Witnesses are all dead. The hand writing of them & of testator must be proved. this is easily done. but the circumstance of the witnesses having signed in the presence of testator is more difficult — The 1st case of this kind that arose, was when one of the witnesses was an eminent Lawyer. & the Court decided that he would know what was right & act accordingly & so allowed the Will. afterwards only prove the honesty of witnesses & it is suff. — so that this thing is settled.

Devise. Revocation

How Wills may be Revoked.

Wills may be stripped of their operative force in various ways.

Revocations are either express or implied. Express revocations are various by C.L. & might be made either by parol or by writing. But a W. has been made in Eng. & adopted by many of the U.S. requiring all revocations of Wills to be in writing. Other States have not attended to it & there the C.L. reigns.

Implied Revocations are by some act of Devisee, from which we infer he intended to revoke, or from some event from which there is a fair inference ~~that~~ he would have revoked, had he been acquainted with it, or had he noticed it.

With these "implied revocations" the W. has no concern. for it says "all revocations shall be by writing". which prohibits implied revocations.

In addition to these there are certain acts which may as well belong to express as implied Revoc. to-wit: as cancelling or drawing marks over the will, obliteration, attempt at burning

As to Express Revocation. Words spoken when there is no animus revocandi are no revocation. As Law. & on his death bed, enquiring for his devisee remarked, "if he does not come to see me he shall not have my estate" it was held to be no revocation (Cas J 115, 1197) But if he calls witnesses & declares before them "that his will is revoked" it is good revoc.

Again, he says "I intend to alter my will, or I will alter my will or I will revoke it" It is no revocation. for he may alter his mind & the words are in future only. In short any thing spoken by way of discourse is no effect. But if the words are in present, as "I revoke my will" or the like it is effectual, 1 Rol 615, Cas C 300. A man should be of good & sane memory at the making of the will so should he at the revoking of it Cas J 497, Ord D 145

Express Revocation } Implied Revocation it has been observed, are some act
of the donor which implies the revocation. As a 2^d will revokes the 1st, 3 Wils 541
3 Mod 208? Now here is a field for controversy. For there it is of no con-

sequence how many wills there are, if they are all consistent with each
other. Now why should the 2^d Will revoke the first more than the first? —
This is the operation of a Codicil, & why should it not be of the 2^d Will —
In the decision of this question, we must refer to the governing Max. of Wills to int.
"Intention of test^r" & when that can be ascertained, the consequence is appa-
rent, in those countries where there are no decisions as the head. but in
such countries the Max "stare decisis" must be obeyed. Now in this country
decide by the Max. "Intention of test^r."

1st Case. The jury found the single circumstance that there was
another Will & posterior in time. It was held not to revoke the 1st, 3 Mod
202. 2 Sal 452. 1 Show 537.

2^d Case. Jury found the man had made a 2^d will & that it was diff.
from the first, but in what that diff^r consisted. Jurators penitus ignorant.
— held to be a revokatⁿ in C.P. Judgt reversed in K.B. & this affirmed in House of
Lords. 3 Wils 497. Cow 97. Brown Par Cas. 344. The diff^r it could not have
been contradictory.

3^d Case. Suppose the jury found, that the 2^d was inconsistent & repugnant
to the 1st, but knew not in what. — It would show they knew
nothing about it, I think. & therefore there should be no revocation. They
afford no evidence to the Ct. for them to pronounce Judgt on — but
decide the question themselves. — which in most cases is illegal.

4th Case. A man under a false impression as to fact. makes a 2^d will diff.
from the former. It (2^d) does not revoke. & he made a will in favor
of his son, who afterwards went to sea. The father supposing him dead from
some circumstances, made a 2^d will & disposed of his prop^y differently
& died. The son returns, & found the 1st will in existence. The Ct held it —
good & not revoked by the 2^d. — On a second ground it was good — that the
father would not disinherit his son without some reason. 10 W 305

Derises. Imp. Revocat. } But if under a false impression of the Law, there is no revocat. Case. He made a Will and gave a separate estate to his wife in case she mar'd again. Some are then told him - he could not give such an est. he then altered it, by a 2^d Will, & gave the prop. otherwise. It held it no revocat. - probably as a mat. of policy.

5th Case. The 2^d Will was made & duly executed. Then test. changes his mind & cancels it. The 1st remains whole. The Ct held the 1st to be set up again. Now it had been revoked by the 2^d, but the destroying the 2^d was considered as evidence that test. intended the 1st to prevail.

Ag^o the 1st was revoked expressly by a clause of revocat. in the 2^d the 2^d was afterwards destroyed by test. Is the 1st set up again? No by the decisions. Now why should it not be set up ag^o as in the former case? "I see no reason. They have made a distinction it appears to me without a diff^y." The whole argument is that. as to the 1st will of the

1st Case. The revocation of the 1st by the 2^d was only implied from test. ass^t - in the 2^d the revocat. was by an express clause of the 2^d. 3 Wils 508 Cow 92. 4 Brut 2512. Cow 49-53. These authorities support the first Division only & are in opposition to the 2^d Div. W.S.9.

Ex^{em}. which renders the presumptions strong that test. did not intend his will to prevail - revokes it. Case. A gave away his prop. and attempt^d mar^d & had a child. It held the will revoked. 10 W 304. It is not probable he would disinherit his wife & child. 1 L Ray 441 This rule not universal. as p^r inst^o a rich Bachelor gave away a large charity by his will, & then mar'd & had a child & died. but left a hundredth part still for his wife & child. The Will was held good. Reason - It was not impossible or even improbable for him to give away such a legacy.

Rule. It is laid down by an Eng. Judge. that if the Will ^{may} appear as a total disinclination to be void. But Judge Reece disagrees. he says it rests on this. Is it such a will or no. as we would suppose it - probable a man thus situated would make 10 W 304 note. 4 Brut 2182.

Devise. Imp. Revoc. } These presumptive revoc. may be rebutted by evidence. & first evidence is admitted. 10 W 304 note 4. Doug 38

A man made a will of all his est. to a stranger. Then married & had a child. Then made a 2^d will, but not legally so. It gave the est. to his wife in trust for his son. It was held a revocation. Doug 35

A case of this kind. The revoc. was reversed. Because he was covertly the lady to whom his est. was given, at the time he made the will

- I Rich Bachelor gave a charity by will. Then married &c. & died leaving a suff. est. for his wife & daughter, while in his death bed he made a memorandum confirming the legacy - then scratched it out - & used this language "the parchment will tell all about it". It was contended the will was revoked, by the cancelling of Mem. - But the lang. used by test was held evidence of ~~test~~ intention to have the will prevail. No Revocation. Doug 31. Brady is C. J.

He made a will & ~~repealed~~ a few small legacies gave all to the lady, whom he married, he had a daughter & made a codicil & gave her 100. afterwards another daughter & a Posthumous Child. It would not revoke the will. Shepherd is Shepherd. Doug 28.

He married & then made his will & gave all his est. to his relatives except a mere decent provision for his wife - died - & then had a post. child born. Here was no intention displayed to disinherit his child, for we sup. from the fact. he never should get one out of his wife. - held to be affirmed.

Suppose he died childless. but leaving a wife - his will was made previous to the mar. & est. given to others. We suppose every thing to be in favor of his wife viz. affection, a happy life with her &c. Now ought the will to be revoked? "Yes". - It could never be supposed he would have left his wife destitute.

Cases admitted by Eng. Judges.

1st Ingram 15. The man made a will when sane, & a change takes place in his prop. & some of the prop. was given to certain legates

Devisees. Imp. Revocat. } all revoked.

This case arose in Con. A man had 6 sons & 2 Daughters. he made a Will & gave his real est. to his sons. & his pers. to his Daughters. The real est. was about double the pers. prop. Testator was afterwards tott. ill & was confined about 7 yrs & died. The pers. prop. being devoted to his support was nearly all expended at the close of the 7 yrs. How should the will have been revoked? Yes. But the sons voluntarily offered to divide the real est. with the Daughters.

When there is an actual intention to dispose of the prop^s diff^{erent} from that specified in the will - the will is revoked, even if the object of his intent fails. Ex J. I devise his prop^s to A. then makes a 2^d Will & gives to B but does not legally attest it. Now B can't take under the 2^d Will, but it destroys the efficacy of the 1st. The 2^d being considered as evidence of test. intentions to disinherit A. tho' still there is no evidence of his intent to give to C the heir at law. - he states, Moore 599, Rep^t 1057 1 Blk 349. 1 Pol 515. 1 Vern 176. 9 Mod 190, 3 Atk 72. some of these author. apply to the following cases.

An estate was given to one who was incapable of holding, - as under the old Eng law - to a pupist - subsequently to having given it to A. as the gift to the pupist furnished evidence of the intent to disinherit A. the will was revoked. 1 Bro. P. Ca. 450

A devised his manor to B, which was previously leased to a tenant for years. afterwards he entered into a covent with C. to settle the premises on his Daughter, as he was about to marry her. he conveyed the property by writing with power of att^{est} to make thing, which was never done. the will was revoked - altho the Daughter could not hold. - Poph 1057

A devised his est^{ate} in reversion to B. & afterwards conveyed it to C. the law at that time required the attornment of tenant. but he died ant^{er} to C. of course C could not hold - but it revoked the will.

A devised to B then conveyed by Bar & Dale to C. the Bar & Dale were not enrolled within the 6 months allotted by law. C could not take - but it revoked the will.

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Devisees. Imp. Revoc. Intest. } A devised to B, then devised the same est to "C" by deed
supposing he could do it. The C could not hold. The will was revoked. Pow 607.

A devised to B & then B² devised to the heirs of the parish - who could not take
the will to B was revoked. Pow 609. 1 Rol 614. 2 Cy Le M. 389, 1 Bro P.C. 450,
10 Mod 237.

But in these cases if the intention of testator can be made actu-
ally to appear. It will prevail. Ex. A devised his lands to B. &
then became desirous of conveying them to another. - The deeds were drawn
but being fearful that conveyance could not be made before his death. he
asked if it was material that the conveyance should be made previous to his death.
& observed that he would not take the land from B if the other could
not have it. - there was no conveyance - the will not revoked
Godbolt 132.

A drunken fellow quarrelled with his wife, and in a fit of inebriety
devised his prop. to one of his little companions. But when sober he re-
gretted the deed. A w to prevent a recurrence of the act, made a bill of
sale of all his prop. to his wife, which was illegal, instead of destroying
the will. he died. the will was revoked on the evidence of his int-
entions 3 Atk 72.

In all the above cases Intestation prevails, but the

Next Class are on the footing of actual alterations. where intest
is not admitted to the government.

The quest. here is: Has there been an actual or intended alter-
ation in the estate devised? & this materially means the symmetry of the law.
Pow 605. The prin. as to actual alter. is a consequence of the law, unin-
fluenced & independant of any intent of test. Of intended alter? Is an in-
ference from the fact furnishing evidence of the intent of deviser. Pow 607

He made his will, then sold the prop. then bought it again - but
the will was revoked. In it had been once revoked by the rule. Pow 609
1 Rol 616.

A devised to B. then conveyed to C to his own (or) Use. Now this est-

Devise. Imp. Dev. Alts. } was not change, for the Ad. Mors reverts the main
mediately. Still the will was revoked. 1 Rot 615. 1 Vex. 411, 7 Bro. P.C. 177.

I devised an est. tail. & devised to B. who could not hold it unless it be devised
& if ~~that~~ B might hold it, he devised the estate & so took back a fee simple
— the est. was altered & the will revoked — "Now there is no reason in this
for it was devised in purpose for to pass by the will. Lewis in Ch. 3 Lev
108, 30 W 153.

(C) I wish'd to devise his entailed estate to B. & so entered into a contract
with B to devise it after he made his will — It was revoked on account
of the change, 1 Rot 614.

A devised before to B. & he supposed he ^{had} nothing but an est. tail. when
he in fact had a fee simple, under this false impression he devised his est.
— now here his estate was not altered — still it revoked the will, 30th 803.
This shows the necessity of getting at the principles of the Law in order to
become Lawyers. now here the

Rule is, If there is an alteration if with the express Design of
passing the prop. by the will — It is void.

As soon as we leave the Courts of Law & get into those of
Equity, the Decisions are Different. For the latter if there
is no intention to destroy the devise, by the alteration. It
remains good.

As in the case above (C) the agreement to devise would be carried into
effect by Ch. — for Ch. considers the thing agreed to be done, as done

I mortgaged his land, & then devised the Equity of redemption. after this
he redeemed the mort. there was no revocation held. for there was no
intention to revoke the will apparent. 1 Wils 311, 30 W 170. 2 Vern 579
1 Vern 329. 2 Ch Rep 154. Sal 158. 3 Atk 805. 2 L Ray 968.

Where there was a deed of Partition after the death of Devise. there was
no revocation altho the est. was altered. A tenant in com. devised his
share of the est. to B. after he died the est. in com. with his co-tenant B. the
will is not revoked. 2 Ray 140

Devises. Revoc. Alter. $\frac{1}{2}$ - I devises Beare to B. & then wishing to revoke a sum of money. Mortgages it to C. & dis. - the est. is altered. It is revoked for ten to only. in the - for it intended B to have the whole est. so he may take what is left. Polk 414

A devised to B. B was in ignorance of it. But on finding he could not pay his debts - conveyed the est. to B to pay them. The debts were of less amount than the value of the prop. say £600. the est. £1400. B pays the debts. & then the est. held the revocation to be void & ante. for if A had conveyed to C. there would have been a resulting trust to B. 1 Atk 272, Polk 32.

He devised to B in fee. then gave to C for life. revocation void & ante. 2 Rol 818. Cas C. 23.

It is a^d if the test had been to B to take after his death (of test) it would have been a revocation in toto. for it is evidence of that intent B should take by the last inst. Quere, why should he not take per ante? Cas J 49.

A Stranger may revoke a will. By Eng law no land can be devised except it be raised by devisee. Now A owns the land & has been seized & while seized makes his will. afterwards, the stranger enters & disposses devisee. The will is void. 1 Rol 818. Polk 145. This of no effect except in two of the States of this Country, Maryland & -

A Fraud was Prac. A had 2 Sons & when making his will he called them & said, "be that the youngest shall calculate the man age real est. & the eldest per. Engd he that of making his will accordingly - they agreed & I said pleased with it. - the per was about equal to the real estate. the father was later sick & the eldest son gave A disposses the father of a valuable piece of land. Now what is to be done? Chan. devised the disposses a fraud. & so rejected the eldest son. for he got ^{all} the ^{est} per, & so much of the real estate. But by the 32. he would have held

This closes what we have to say of Revocations by C. L.

Devises. Revoked by St. It is necessary to be acquainted with the Eng. St. as to the revocation of Devises, as there are many of the U.S. which have adopted ~~the~~ or similar ones. But where such St. have not been made, the C.L. rules.

The St. of Eng. Devises all Devises legally made shall be held good, unless cancelled, obliterated, torn, burnt or altered or revoked by some other will or Codicil in writing, or some other writing which has been signed in the presence of 3 or 4 witnesses. Now the four first circumstances revoke the will by C.L. we have to notice then the two last only - the will or Codicil in writing, & the other writing signed &c. 29 Car II c 32 § 6.

Now what will revoke? Some evidence will not. for it is not noticed in the St. - There is a delicate distinction. It may be revoked by a devising will. By any writing containing a clause of revocation, if duly signed in the presence of three or four witnesses. It must then be signed in the presence ^{of 3 or 4} witnesses. Whereas a devising will must be signed in by witnesses in the presence of ~~test~~. So if the revoking will is not signed in the presence of the witnesses & they of the number of 3. it is void, 2 Mod 259. 1 Show 59, Cask. 245. 2 Atk 242. Suppose I do make a will & solemnly revoke all other Wills & this is not legally made it will not revoke.

A man attempts to revoke a former will by a Devising Will which he does not legally execute as a Devising Will, but it has all the requisites of a revoking will, Now the Judge Re. thinks ought to be good to revoke. but the authorities are contrary. On Ch 459. 10 W 343.

Rule then is if he revokes by a Devising Will, it must have all the requisites of a Devising will. & if it is merely a revoking will, it must have all the requisites of a revoc. will as established by St.

As to those circumstances which revoke by C.L. to wit. obliteration, tearing &c. to make the revoke - we must couple the intention with the deed. Con d. Having written & executed his will instead of his son & afterwards his intention upon it - there was no revocation, for it was not done animus revocandi. 10 W 345.

Devise. Revoc. by St. } I made a Will which he did not like, & often spoke of
destroying it. One day ask'd his relative & attendant B to bring it to him
he did. - he took it & tore a piece nearly off - crumpled up - & threw it on
the fire - it fell off. but would have burned - had not B took it up. He
resented it - & doubting whether it was burned & told B what had become of it.
He answered "he told it. he requested her to destroy it, which she promised
to do. but did not. - It was held to be revoked, for it was done & torn
animo revocandi. 2 Bl R 1043. 3 Wils 508

In case of duplicate being taken, the destruction of the one in
Devisee's possession revokes the other Com 459. 2 Vern 742.

A Will may be torn with the intent of revoking & still it not tant-
to a revocation. for it was done with reference to something that
did not exist. Case. he made one Will - then another. but before this
was finished the he supposed it finished, he tore off the seal
- at this he was lost, because the 2^d was not finished. & it never was.
The 1st was held not to be revoked 1 Eg Ca 409.

It is apparent here that the St. has attained the Co. for the
2^d the void will at Co. voids the 1st. But by St if the 2^d is not
only made the 1st is not revoked or voided.

Republication of Wills

The 1st will of cases under this head is when a man has revoked
the 1st will by a 2^d & then revokes the 2^d - by this latter act the 1st is
set up again. - But when there was a revoking clause in the
2^d the 1st is not set up ag. (see infra p. 13-13.)

Estates for qq pass only as real estate. 2 Wils 891, Bro R 499. 3 Wils 29
1 Wils 437. 10 W 275. 5 Co 88.

The Repub. conveys no more than the lang. of the will will
cover. as if at the time of making the will he gave all his est. lying in
the town of L & at the time of repub. he owned land in the town of B
the last land will not pass. 1 W 575

(d) Leasehold estates subsequently purchased will not pass by the republication of the will, altho her. prop. for the same reason that real prop will not. as they are capable of being identified, ascertained, defined. whereas her. prop. is transient, uncertain. Att 176.

Devisees. Repub. } A Parol repub. was suff. at C.L. but by W no lands will pass except the will executed legally.

Effor. Repub. is the taking the will in the presence of witnesses & acknowledging it as his will — This was the trouble of uniting the will the second time 2 Atk 599. 1 Ver 440. 9 Mod 752

Despoted. What amounts to a republication.

Whether a testator republishes a will, the testator's conveyance pur. pur. chased after the making of the will. It was cont'd on one side that as there was no clause of repub. there was no repub. On the other that it was suff. as it refer'd to the will. Decided on this prin. was

the will at the time of making the testator considered as his will? & was the testator made according to the testator?

It is now settled that if the testator conveyed nothing but per. prop. & he on a separate piece of paper. if made according to the testator for conveyance & real prop. & there is evidence on the face of it of testator referring to the will. it is a good republication 3 Atk 150. 1 Ver 445. 7 Ad 922. Cro E 93

10 W 687. 1 Bur 514. Com 381. Cow 1585

(d) Leasehold Estates are governed by the same rules, with one exception. To wit: a will concerning it can be revoked by parol. & a Leasehold by testator. is per. prop. but it is not so under the testator. Case a man looking over his papers. threw them aside one after the other at length took up his will & threw aside saying "this is my will." An attempt was made to prove it a revocation. but the testator would not allow it. — he thrown it aside because it was not the paper he was looking for. 2 Atk 594 3 Atk 176. 8 K 90. 2 Vern 621, 1 Bur 554.

A man in his will said. "I give & devise all the lease holds, which I now hold" & about 15 yrs afterwards, republished it. He held that the word "now" carried it back. & there was no repub. Judge Keene thinks this wrong. for it is agt the very prin. of republication, 2 Atk 593.

A person not in esse at the making of the will, may take under the republication. A man's estate except a few lega

Row 419.
418

Devise. Repub. } to his son Joseph - Joseph died - he then had -
another son whom he called Joseph. & republishes - the 2^d Joseph test.
1714 & 75.

The word "son" is often made use of in wills, when the Devisor means
grand son. & when Devisor has no son alive but has a g^d son. the
g^d son will take under the word son. 2 Vern 106. 3 Mod 314 & 2 Show. 83.

A Devise may be republished ^{but it acquies} ~~which~~ has no new qualities, ^{if it} must
if it was not good at the making the republication by a Cod^{icil} will
not make it good. 2 Ch 271.

A Devise made by a Minor, if repub. after he becomes of age
will become good. for the acts of a Minor are not void but voidable
1 Ch 102. Contra New 172-3.

A Will may become inoperative, & ext. by revocation

1st By Uncertainty. i.e. When it is so worded that it is impossible
to ascertain what testator meant. - The Ct will never put a presumption
the construction upon a will - Ex. A Devise to the sons of J.S. who
had perhaps a half dozen. Dow 411, 424

Rule when the Will is unintelligible on the face of it - it is
void.

But if the will is good on the face of it & some circumstance
has arisen which renders it uncertain. Evidence which will remove
the uncertainty may be admitted. As he gave to his son John. & there
were two of them - to the Charity school of such a place & there
were two of them. Now evd. will be admitted to show perhaps that
he had a particular affection for this son or that school, & then
the Will will become good.

2^d When if the intent of testator was void into effect. would be
effect an illegal act. it is inop. As gave to B & his heirs forever
on condition he should not alien. - Entailed an estate on B. & condition he
should never dish it. - That the wife should not take dower.
then under the Will inop. only so far as the act would occur illegally.

(C) A devise may fail of taking effect, by reason of a waiver of (Pow 443)
a waiver of the benefit by the devisee; such waiver is either express or
implied. An express waiver is as in the text.^a An implied is where
the devisee does some act from which it is inferred that he does not
accept the benefit intended him under the Will. Pow 443.

Devises. Inoperative.

3^d If the devisee does not accept of the devise, which is often done when large debts are charged upon it.

4th If the devisee has done the thing in his life time which he devised to be done. As he devised £400. to B. to build him a house he gave it to A before his death. The will was inoper. for trusts.

5th By operation of Law. When the land is liable for debts & the pers prop. is not sufft. to pay them. If I give land to A. B. C. & D. & any one of the lots is sufft. to pay the debt. now in Eng the Ex^r may take which he pleases. & it is a litigated question whether there is any remedy. But it is divided in this country. That if the legacies are in money. the others shall refund - when the leg.^s of one is taken. But if the legacies are specific. it is a question. In Equity no doubt there should be an equalization. For in the other hand there is too much power put into the Ex^r's hands.

6th A devise to the heir at law. is inoperative.

Power of Devising lands to be sold.

The power that a man has to devise his lands to be sold after his death, is similar to that, which he has to grant power of atty to a man to sell them in his life time. This latter power has never been disputed. all that is required is that the power be recorded with the deed, which by atty is given. I know once that a man had no power to devise his lands to be sold. as it was also thought he had no right to dispose of it after his death. The one idea probably arose from the other. But the two powers I now settle. & it is very customary for men to make this devise as to the sale of their lands & it is most usually made for the payment of debts.

This power is most usually given to Ex^r. tho it may be given to any other person just as well. when given to Ex^r. they act only in the character of trustees, & as such, dispose of the lands & pay the debts. as would be ordered by C. h. i. e. to all men equally.

The power is sometimes connected with an interest & sometimes not.

(2) which are construed strictly, always.

Devises. to sell. ^{or} rather a forced distinction is here made. And the Judge thinks the testator could never have meant such a distinction to be made, as is made. If the testator say, "I devise my land in A. to be sold by my Ex^r" it passes only the power to sell. But if, "I devise my land in A. to my Ex^r to be sold" it passes both the power to sell and interest.

Now in the 1st case, the Ex^r has no beneficial interest, but he is the nominal owner until the land be sold. he having but a negative right it operates as a Power of sale ^(a) & as such is governed by the same laws. & when he conveys a title, he conveys it in the name of deviser.

The Effect of this distinction is. If the estate is devised to be sold by three Executors, no two of them can do it, the three must be joined in the conveyance; so if one of them dies, the survivors cannot sell. In such a case Chan. must be applied to. Ex he gave power to his Ex^{rs} in law to sell three were four of them, one died, now the remaining three convey. Was it good? It was contended on one side, that there were enough of the sons left to answer the Lang. of the will. "Laws in Law". The Ct. allowed it. Also they strained the point to prevent the Will from falling thus. Bro C 28, 524, 180 173.

But in the other case. Where the land was devised to Ex^r to be sold. as estate continued, ^{as the trust is} the survivors might convey. Bro C 922 Low 2: 52. Co Lit 118a.

Suppose the persons empowered will not undertake the trust. can they be compelled to accept? undoubtedly not. For no man can be compelled to accept a trust. but after a certain time has elapsed, & they have not disparted or rather refused, the Law presumes an acceptance, & proceeds accordingly. Max Silence gives consent. Ch^g prop^r trusts is next without assent. & direct only by dispart. J. S. conveys prop. to an infant, no assent of the infant surely is necessary. He may dispart & then the prop^r trusts.

In case of this refusal to act. Chan will appoint other trustees, usual. & the heir is one. p Lev 304.

If lands be devised to be sold & not said by whom. Ex^r shall sell: Lev 207

Devise. 1. Will. Mort 2. An estate is given Q to maintain younger children
in this case they may have an interest as well as a power. I may rent the
prop. & if the rent is not sufft. they may sell. I intend there is no check upon
them or remedy eg them except for alien of trust. In which case the Ch
of Chan. will take cognisance. for that Ch assumes the jurisdiction over all aff
airs of this kind. Roman devised his estate to his 2 wife for maintenance of
younger child. She gave more to her own child than to that by former
wife. Ch took notice of it.

St. of Uses as relating to Devise.

Many of the M. S. have such a St.

Before the St. of Uses. 27 Hen 8. If A conveyed lands to B to the Use
of C. & the cestui que use, could compell B the cestui que trust, to
render him the rents profits &c. or to surrender up the trust. The con-
fusion arising from this state of things induced the St. of Uses which
vests the title in the cestui que use, so that he who owns the use
also owns the title.

Now this would be a good consequence in this state where there is no
such st. not so in Eng.

State, measures have been continued to eradicate this St. of Uses even in
Eng. And it is by means of this erasure that all the trust estates of that
country which indeed are numerous, now subsist. It is done by convey-
ing to B to the use of C. in trust for D. the St then immediately vests the
title in C who holds it in trust for D. "Thus this most useful St.
is eradicated. & from this erasure has arisen that grand system of Law
which is to be found in the Books of Equity.

Who may Devise, or rather who may not Devise.

All persons were incapable of devising ^{before} previous to the St. Wills 32
Hen 8. But before this St any person could Devise her goods, except Idiot
infants & persons of unsound memory & these it seems were incapable of.

(c)

It is not enough that the testator be of memory, when he makes his will to answer usual & familiar questions. but he must have disposing memory as ~~that~~ he would make the disposition with understanding & reason Pow 148

(d)

But there must be actual proof, of the undue influence of a stranger upon the testator, or the law will not avoid a will regularly made Pow 171
3 Bl Ca 103.

Devises. Devis^{es} of devising by C.L. before the Lt. Liberty of Devising was
propped in some places, by custom. Pow D 140-1-2.

The Lt was intended to put real prop, on the same foot^{ing} as to its cap-
acity of being devised, as the prop. was before the Lt.

(c) 1 Munro was cut off by the Lt on the ground, of their want of discretion
2. Prots & persons of non-sane memory. were disqualified on the ground
of incapacity, or want of discretion. Pow 142, 144

As to the Disqualification of feme-coverts - see Baron & Feme.

All persons may devise them. who have capacity to take due and
proper care of his prop. & affairs, & to manage them with ordinary dis-
cretion. & the Court in general will not set aside the devise of any person
who can do the ordinary business of life

Surviv^{er} or Imprisonment, will disqualify a man from devising, &
here the Lt will go much greater length to set aside the will than
they will a deed. "Danger of loss of life or limb" only will set aside the deed.

(d) Insensibility of a man when on his death bed, will disqualify
the will; as regards his opinion for respite from teasing. As for the
devisee must be left perfectly at his ease, or the will will be set aside
unless on money he should allow it to be good. A man when sick &
sent for an att^y to draw his will, he came. The wife was called for
advice. As his wife differed as to the dispositions, & the wife bore ill, &
got well & did not alter his will. Some of afterwards the att^y asked
if he had got another will drawn, as he intended. He replied no for
he found it better than he thought it was, when he was sick. On this
evidence of the att^y the will was not set aside, tho it would have
been had not such evidence appeared.

A dispossession of land is a disqualification. But a man may devise a
lease for years, for the term is in under the devise, but if the person is not in under
the devise, the will is void. Pow 155, 2 Lon 208, see sum. p. 11

If the disability be removed before the consummation by death of devisee
the will is still void. Pow 173, 2.

(b) A distinction was once urged between the appointment of such Justice
per verba de presentē, or per verba de futurū. It was settled that the latter
phrase will constitute a power not in esse a Justice but it is yet dispute
as to the former. Pow 322. 1 Q. B. 173. Pl. 12. Stra 109. 2 Mod 9. Dyer 205 b.

Devisees. Devisees } of Devisees.

It is difficult to find persons who are disqualified from being Devisees
in fact there are none unless disqualified by St.

(6) 1st - A person may be made ^{Devisee} who is in ventre sa mere. At the moment
of Devise is not regard to the Devisee. But the Devisee can't be compelled
to accept of the Devisee

Property vests immediately on the death of Devisee, from which has
arisen the question whether a person not in esse or dea. Devisee. — But
the property given by will may be made to vest in future, but the point
is now settled that one not in esse may take.

Q² - A man may now bequeath to his wife. formerly it was said he could
not because they were one, & that Devising to her was Devising to himself
but this idea is exploded, for the estate vests not till his death. When their
unity is destroyed How D 314. C. 102 b

Again he may grant to his wife, by granting to J. & his wife to
grant to his wife. & Where there is ~~an~~ St of Mass. J. grants to
J. & to the use of his wife Mary. & the St then vests the title in Mary.

3^d Aliens. It has been said that aliens can't ^{be} Devisees. — This is not
true, Aliens cannot legally hold prop. But in case of Devise, the
interest passes from Devisee to the Alien. If then it would be
perfected upon Office found, still be considered as Devisee.
suppose he had chil. born in this country, & he should die before
Office found. the Chil. would take. How D 316. 7. 87

4th Illegitimate Children. The governing max as to illegit. is —
the he is filius nullius, or belongs to nobody. — There is something ridic-
ulous in this max when carried to its extent. to wit, that he is not even
the son of his mother — he can't gain a settlement from the right of
his mother.

Policy is probably the foundation of the rule — for if the Bastard was
permitted to inherit from his father, it would often occasion great distur-
bance in families

THE

Devisees. Devisees } The illegit. can have no relation to whom he who can
inherit to him. ^{not even his own body} neither can he inherit to any one, tho
he may be made a Devisee, I receive a grant after he has acquired a name by
reputation, & of give to him by that name. Co Lit 32

But if he should be devised to as the son of A. he could not take, if
to A's eldest son. & he be illegit, he can't take. So if to the eldest son of A
whether illegit or not, the first if illegit could not take, because he had acq-
uired no name by reputation. But a devise to the illegit child of A
B & D. it is good

A devise to all the illegit child of A. viz. B & D. & to those who
may yet be begotten in the body of D. is good as to those named. & void
as to the unborn. Max Co Lit 2. Note. 10 W 329. 1 Atk 418.

Is that an estate cannot be devised to illegit child unborn - tho
it can be legitimated, if not to commence so long in future as to create
a perpetuity.

By a Remainder, an estate may be give to eldest son of A. when
he has none, but if that child be illegit. he can't take, even if he come during
Devisee's life. for give of Damnum contra maritimum, inter vivos non computatur.

The principle is, the bastard must have acquired a name by reputa-
tion at the time of making the will

An estate may be made to commence in future by devise. (none of them under great
writing). It is because such strict formalities of vesting estates, are not
required when it is given by will as by deed. In this case I gave give to
the eldest son of J. S. It must be given by way of remainder. & then the
son of born before the death of Devisee will take the remainder.

A gives by devise to his son John provided he marries on a certain day,
- the devise is good - & the prop passes on the day of marriage. - And until
then rests in the heir.

5th These Uncertain Devisees are common, as a bequest to the son of J. S.
who should first marry.

A grantor estate cannot be given in future.

[The text on this page is extremely faint and illegible. It appears to be a handwritten letter or document, possibly in cursive, with several lines of text visible across the page. The ink is very light, and the paper shows signs of aging and discoloration.]

Devises. Devises } It has been much disputed, whether, a devise could
me made to a person not in esse. & the distinction appears to have been made
between Devises in rebus in presenti & in rebus in future. It was early
settled that the devise could be made in future. but the dispute long
raged as to its being given in present. The books are full of those cases
in which the ingenuity of council, has been thoroughly tried on this
delicate point. But the dispute is now put at rest. on the ground
that the difference could have been meant by test. and that no man could
be so foolish as to give an estate to rest before the devise was born, but
it was to rest as soon as he was born. see this question considered
at length & very ably, in Learn on Rem. from p 332 to 428.

Formerly a devise to a child, in restitu & the words should that the test
was to rest immediately - it was void - But if the words should
the intent that it should not rest until the birth - it was good.
But now. the devise is good in all cases.

6th Once a question whether a person could be a devise, under a Des-
cription without his name. It is now settled that he can, when the Des-
cription personae is certain. as the Sheriff of the county of Leitchfield
it undoubtedly by means, M^r Landor. So the favor of the parish of St.
but should there be two of the same parish - the will would be void
unless good proof could point out the proper one. Whit 2a.

7th Ques. whether an estate given to many relatives, would be
good. They can now. & it is to be given as directed by the Lt.
It was said that there was no diff. as to the Distributions under this W.
& Distribution & the Lt of Devint. But there is as under the W. & Des.
it goes to the next of kin & legal Rep. whereas under the Lt of Dist. it goes
as it is now in this case understood to go, to those of the nearest degree
of kindred - so that all in 1st degree take & exclude those of the 2^d,
& in default of those of the 1st degree. those of the 2^d take to the exclu-
sion of all in the third. 1 Ves 64. 1 Atk 759. 761.
489. 471.

In short any words which decide the person a pers^{on} understandingly will comply.

Devise. Devisee } An estate given to the heir of J.S. by devise, the devise will be void unless it is apparent, to whom it was meant to go. For there is not suff. descriptive personage, for the person who may be heir of J.S. to day, any possible will not be at the time of his death. I agree now here is no remainder. It gives a certain person remainder, & those persons who may happen to be heirs at J.S. death will take. 2 Vent 311-3

An estate given by devise to the heir apparent of J.S. will be good 2 Vent 311-3. for in such a case the description is suff.

A man had two Daughters, & a Nephew to whom he was attached living with him. He made his will & gave to his heirs, a certain prop. & to his male heir, a certain prop. — But now he had no male heir — but it was apparent Devisee had reference to his Nephew. Ergo he was permitted to take.

Rule is. If the word "heir" is used as to devise some particular person the devise is good. Unless if not, i.e. if it is not apparent from proof that he had reference to some particular person. So the circumstances of the family as well as the descriptive personage are to be attended to

If the word is used in its legal sense the Will fails. but if in an illegal sense & by way of descriptive personage, it is good.

Introduction of Parol Testimony

This is an interesting branch of the law of Devise. We will first lay down the law, & then exemplify it.

There is a general rule. that parol testimony is not admissible either to add to, diminish alter, or any affect a written Instrument.

But notwithstanding this general rule there are very many cases where parol testimony may be introduced. to the general rule see 5 Co 87. 2 Vern 98. 2 Br 316. 1 Ves 149. 2 Atk 218, 373. Plow 345.

There is nothing more important in prac. than to quell argument with this branch of the law. Young men often plagued with it

Devises. Parol. Test. } What can be proved by parol testimony as
it regards either devises or devises? for there is no great difference between them in this view.

By the St. Ex. & Pur. so far as it respects evidence. Any sett of facts may be proved by parol test. from which satisfactory inference may be drawn & which proof does not go in opposition to the terms of the will or the will may be. Case. A claims he made but a mort to B whereas B says it was an absolute sale. A offers to and the deed substantiates this argument. A offers to advance ^{proof} that he gave but a mort, but by the St. Ex. & Pur. it cannot be admitted. But he can prove the sett of facts alone noticed. To wit. A has been in constant possession for the last 10 yrs. - at the time he gave B the deed, he borrowed a sum of money of him (B). A has regularly drawn the rents & profits, since the deed. And B has as regularly drawn him for the interest, on the note which A gave at the time of giving the deed. - Now from these circumstances it is apparent A gave but a mort. & there is no proof advanced in opposition to the terms of the deed.

An argument can never be proved, ~~if not~~ does not as it is said stand well with the Will. Case. A. M. made a will & gave a legacy of 100£ to be divided among the 4 chil. of her sister E. B. - & gave another legacy of 200£ to the chil. of E. B. Now E. B. had 6. Chil. 2 by the 1st Hus. & 4 by the 2^d Hus. Parol proof was admitted to prove she had after said she gave to the 4 Chil. meaning those by the 2^d Hus. - The proof of this argument stands well with the Will. 2 Des 216.

Ag. A man gave a note worded thus. "I promise to pay A. B. 10£" leaving out the "value recd." Parol test admitted to show A. B. sold him an horse. But if he had inserted "for an inconsiderable consideration" the proof of the sale of the horse would not have been admitted.

Devises. Ambiguities } Ambiguities
one either latent or patent

Patent ambiguities are when the ambig. is apparent on the face of the will. Latent, is when it arises from something dehors the will, & is not apparent on the face of it. Ex. A. Devises to his son Joseph - there is no ambiguity apparent or patent. - but he had two sons by that name. Now the ambig. is latent, for which Does testifies to. - Parol evidence is admitted to ascertain this, to wit. that the elder Joseph had been settled by the father & well provided for, & this the father had often declared - whereas the 2^d Joseph was unprovided for.

Devisor gave his estate to his child. to A & B & C. to D & E & F. but the youngest & a favorite child he left totally unprovided for. Parol test. may here be admitted, on the basis. as the Judge supposes. that the Devisor was under the influence of disease, or was non sane, when he made such a will. Ex Co 155. 2 BW 137.

In all these cases of Latent ambiguities - parol testimony ^{dependent on facts} may be admitted to show the state of Devisor's mind at the making of the will.

But with Patent ambiguities, we must get along with them as well as we can - and if they can't be explained, the will becomes void. for parol proof cannot be admitted, except to explain some word or phrase, but never of sentences. 2 Vern 624.

A Devised to AB. & there were two persons in the city of that name, but not sufficiently known to each other to have obtained the title of Sen. & Junr. parol test. was introduced to show which had reference to. 2 BW 137

A gave £400 to the Charity school of the town of B. & there were two there. parol test. introduced to show which he meant. 2 Bul 150. 1 Sal 7. 8 Mod 199. 2 BW 136. (2 Ves 216 4 Chil) (1 BW 34 Charity School)



Devise. Parol Test } This business of parol test. has been carried further
still. A Bachelor had a Niece whom he called Susan her real name being
May. By this nice name he devised prop. to her. Parol proof was admitted
to show that he had reference to this niece - fortunately there was no
person of the name of Susan, had there been, it was thought the misnomer
would have been fatal. 2 Atk 240, 1 Atk 400.

Devise it seems was at a loss as to the name of his son, &
devised to him as his "son Wm. who is now serving in the Duke of Albany
army - his name was Charles - The Description saved the legacy.

In Atk 240. The Ct would not let the blank to fill by parol
test. when the Devise was to M - .

Providence is at any time to ^{be} admitted to show who was in-
tended to take. -

In 2 PW 141. A mistake was made both in the Christian & human.
parol evidence was admitted. but observed by the Chanc. that if it had
been a Devise of real prop. the legacy would have been lost.

It was observed that to explain equivocal words, parol testimony might be
admitted. case. The Devise was "senior's heirs." now classical scholars would
mistake the meaning of this Latin phrase. but in common letters, the
words "heirs" is either of the mas. or feminine gender. Parol proof admitted
to show who was intended.

The circumstances of family introduced ambiguity. Case. a Devise to
A & his Chil. now if A had chil. they would take equally with the Wife
as tenants in common. But if he had no chil. the word "children" would
be taken in its legal sense, which is the same as "heirs of his body." This would
pass an estate tail. Parol test. introduced.

Estate is an equivocal word. Antiently it meant the thing itself
& nothing more. Now it means the interest a man has in the prop. Between
these two periods, the meaning was doubtful.

It is now understood, that if a man had a fee simple & he gave his

Devise. Parol test. $\frac{1}{2}$ "estate" he gave not only the thing itself but the interest also. Parol proof admitted to show the nature of the prop. given. Care. Devise says "I give my real estate to J.S." now is an est. for life or in fee given by this expression? To ascertain which, we prove there were a number of legacies given & charged on the estate, & then to a very considerable amount - from which we infer. test intended an est. in fee, for an est. for life would not be worth the legacies. - for then Parol proof admitted.

He gave all his real estate to J.S. who was to pay the debts. the debts were to the amount of \$1000. the est. worth \$5000. - as above -

Before the St. of Wills nothing but an estate for life passed unless the word "heirs" was used. So that as it was often uncertain parol test was admitted to settle the point.

It is now settled that when the word "estate" alone is used, it passes all the interest the man has in the prop. a fee simple if he has so much, &c.

This doctrine as to parol test. has been carried further still. in the case of Cole & Robinson, when the estate would have been void if nothing but an estate for life passed. Care. Devise said. "I give & devise to J.S. the house called the bell-tavern. Queen What estate is given. Now a lawyer would say, undoubtedly at sight of the inst., "an est. for life" but it seems J.S. had already an est. for life in the prop. for he was tenant in tail. the reversion resting in P.M. the Devise. So if J.S. died without issue, the estate vested in P.M. so if he (P.M.) gave only an est. for life - his will was void as estate had that already. So it was decided by the high Judges in opposition to Lord Holt that the reversion was bequeathed, & J.S. rec'd the fee simp. Lord Holt sd. that the intent of test was to be collected from the words of the will & not from extrinsic circumstances. & Matter that can not appear till found when found is not to be regarded in the construction of Wills.

The Decision of this Ct. was affirmed in the Exchequer Chamber. & then in the House of Lords see Pow 409. 1 Sal 234. 2 L Ray 211. 1 Bro PC 109.

Devises. Parol test. } A Lady devised to M.O. the sum of £5000 worth in long annuities. to M^{rs} the same. to J.B. 2000 worth in long annuities the Int. & to accumulate. & the rest of her estate to the Poorhouse. What is the meaning? The words long annuities means so much prop. as would raise £500 a year. Upon examination of her prop. it appeared she had no more than would raise £1200 a year. She was as decided. "give us much stock as will raise the £5000 legacy & let on a rehearing changed his opinion & admitted the evidence to show the value of her prop. upon which it appeared that by the construction taken in the prior Judge she had given ten times as much as she was worth; which would be making both the Will & the woman ridiculous. Besides it appears she intended the Poorhouse as the principal object of her bounty. So it was decided to give to the legacies so much stock as would amount to £5000 or the legacy & not as much as would raise, 500 p^{er} an. Powd 514 1 Brown Ch 172.

It has been said that if Dev^r appoints a Dev^r his Ex^r. here leaves the Debt. now this is not true. But when the debts & legacies are all paid, the Ex^r by the law of Eng. is entitled to the residuum. Case. J^r appoints A (his Debtor who owes him £1000.) his Ex^r. now this money must be paid if required.

If he appoints B & C his Ex^r & B owes him \$100. he devised the residuum after his debts & legacies were paid, to his Ex^r. now B claims an equal division of the residuum. & C claims a moiety of the Debt. Parol proof was admitted to show that Dev^r intended B's debt to be relieved.

The lands were devised for the payment of Debts. The construction in this case is that they are not to be sold until the prop is expended. This was contended for the heir and devisees' intentions. Contrary. The prop would not stand well with the Will. & Judge R. thought this good reasoning - But the rule has been lost. Shows an error

Devises. Parol. test. { When there is no legacy given to the Ex^r he takes the residuum after the payment of the debts & legacies, for there is no one else to take it.

But when he has a legacy, the Rule is that if there is a residuum, it is to be distributed according to the Lt. - For it is supposed he is paid for all his trouble by the legacy, as it appears upon the face of the Inst.

Apply this Rule to those States where the Ex^r is paid for other trouble. The Ex^r had a legacy given him. He then may introduce Parol test. to show that he was intended to have the residuum, & rebut the rule of equity that it should be distributed.

Parol evi. may always be admitted to rebut a rule of equity, but never a legal construction. In the case above. the Law gives the Ex^r the residuum. Pow 524. 2 Ba 426.

Pow. lays it down (p 524 Dine) that Parol Declarations even of a testator, may be received in all cases to rebut the constructive Declarations of a trust put on words contrary to the legal sense of them which is rebutting an equity.

The Courts of Law & of Equity have sometimes given diff^t construction to the words of the same will. & When they differ on the sum will Parol test. is admitted to rebut the equitable construction, in favor of the legal to wit that it was the intent. of test^r in the case above, that the Ex^r should take the residuum. Pow 525. 2 Vern 253.

This is a very important rule. And there are a great variety of cases where a man may depend upon the rebutting of this equity, & the Parol test. may be admitted to rebut it. 2 Vern 877.

It is a rule of Equity that the heir of Mortgagor has a right to redeem the equity of redemption, & may call upon the Executor to furnish him the money out of the personal prop. with which to redeem but notwithstanding this rule. When a man on his death be-

Devise. Parol test. { ^{by parol} exempted his her part from part of his debts
The heir could not take advantage of the per. prop. according to the
rule of equity to redeem the mortgage. The Parol proof, that test. intended
the per. prop. to be exempt & given to his wife being admitted. Now
525. 2 Nov 1799. Sal. ca 79.

Repeated Legacies.

Parol proof is admitted to explain the test's intention in the
case of repeated legacies, & in "My opinion in the generosity of ones
totally unnecessary.

It appears to be a settled principle that when two or more leg-
acies are given to in one instrument totidem verbis et eisdem generis
to the same person, they shall not be accumulative. but if in diff.
instruments as in a codicil & they will be accumulative, or they
are distinct. Now this being the case where is the necessity
of introducing the parol proof to explain test's intentions.

Case: test. gave his son A \$100. & then gave a variety of legacies
to diff. persons. & then again gave to his son A \$100. The legacy
here no doubt was one, & that he should receive the \$200 he had
no intention should be the case. — We conclude ~~but~~
forgot he had given the legacy before — & afterwards discovered
neglected to alter his will 22 Aug 1724.

But if the legacy was repeated in a diff. inst. the case
would be varied. As the man being attacked with a fit of sickness
from which he thought he should not recover, gave notes of
hand, to certain persons. He recovered & made his will & gave
the same sums to the same persons. Now parol proof was admitted
to show he intended to give these legacies the double sum. Now 525
or 2 Aug 1724.

Now when test. makes his cod. or second inst. it is supposed he
knew what was in the prior one. therefore parol proof was admitted



Devisees. Reap. Lega. } He made a will when he was near dying & gave a legacy of \$700. Then by a subsequent inst. gave his \$400, it being given twice in two diff. inst. it was held to be enough. This third in com. See this principle in 1 Bro. Ch 389.

An old lady took quite a notion to her maid, & in her will gave her £400. & then by a cod^{icil} gave her £200. After this by another cod^{icil} gave her £400. & again £200. The ques. was should the maid take all. — The rule was they are accumulative & L Ray 1824.

It is to be observed that in the cases before then cited. parol test. was admitted when it stood well with the Will.

Now here upon the same principle of the evidence not being contradictory, parol proof may be admitted to show that Devisee meant the devise in the Will to be a performance of some pre-existing engagements; here it is not brought to expel the Will but to explain it. Case of Devisee giving his wife a legacy equal in amount to the covenant of mar. settlement. The ques. here arose whether the husband was bound by the covenant. & could the Wife take both by the Will & Covenant. Parol test. introduced to explain & it stands well with the Will. Here the Wife may take by which she chooses, the Will or the Covenant. 2 Ves 223.

In all cases of fraud. Parol proof may be introduced, otherwise the rule would be instrumental in encouraging that which it is its object to prevent.

A Synopsis of the preceding law as to Parol testimony

Copied verbatim from the Judges Book.

I Parol arguments of the testator's declarations of his intent. at the time of making his will are not admissible: For if those declarations are in conformity to the will they are useless: As it is not the pain of C.L. & opposed to the Act of Frauds to admit them

Synopsis } to explain, enlarge, diminish or amend the language of the Will; or give the words therein used a meaning different from what they obviously import

II When there appears an ambiguity on the face of the will not arising from the use of equivocal words, but from the construction of sentences contained in the will. No parol proof of any kind is admissible to explain what the testator intended.

III If an ambiguity arises behind the will as in the case of two devises of the same name, or of two persons known by the same name when one only is devised. Parol proof of test. intent, not arising from his declarations, but to be inferred from the proof of certain facts is admissible.

IV When there is an ambiguity respecting the person who is intended as devisee, he being insufficiently described, as called by a wrong name - argument may be made of the true name.

V When an equivocal word is used relating to a person an argument may be made as to who is intended.

VI When a word is used that is equivocal, because under some circumstances it means one thing & under other circumstances it means another as of the word "his" sometimes, a word of purchase or other of limitation, arguments of the circumstances of a man's family may be introduced.

VII When an equivocal word is used as to the quantity of prop. devised, & thereby it becomes uncertain from the words of the will what quantity of prop. is devised. Parol argument of the circumstances & state of the prop. of test. may be made.

VIII If the words are not equivocal, yet if their technical meaning will render the devise ridiculous & the devise unreasonable such meaning not according with the state of the prop. of devisor. The state of the prop. may then be availed, for the purpose of producing such a conclusion, as will comport with the words of

Synopsis { state of the prop. altho contrary to their technical mean-
ing.

IX Parol evidence & even Parol declarations of a testator are admissible to rebut an equity. - It frequently happens that the construction of the words of the Will in a Ct of Law is different from the construction they would receive in a Ct of Eq. To restore the legal construction & thus to rebut the equitable one: Parol test. of the testator's intention is admissible.

X But in no case can Parol proof be admitted to remove the legal construction & place in its room the equitable one.

XI Parol testimony is never admissible unless the construction intended to be produced by it - stands well with the Will. Explained by the case in Ves. (The 4 Chl of one Mrs. & 6 by the two Mrs.)

XII. Parol testimony is admitted to prove that the legacy was intended, as satisfaction of a preceding engagement.

Executory Devises & Remainders.

must be considered together.

Executory Devises & Remainders agree in this, that they are estates to be enjoyed at some future period, the right in the one case is given by Will in the other by deed. But it is to be observed that a Remainder can be as well given by Will as by deed. But an executory Devise must be created by Will. If an estate is given in fee limited upon an est for years or life it is a Rem^r whether given by deed or Will. But if the est. is given to commence some time it is void by deed, but would be a good Ex^y Devise, given by Will.

An est. in Rem^r made to commence in future will be good unless supported by a particular estate.

An estate is given to A for life Rem^r to B in fee, here the interest immediately passes out of the grantor or devisee. & rests in A & B. B will have all the privileges & government of the est while in possession of tenant for years, that grantor would have had, had the reversion remained in him. This is a vested Rem^r because the estate rests immediately upon the issuing of the deed or on the death of devisee.

A Contingent Rem^r is one which rests at some future period, on the happening of some uncertain event, so that it may, never exist. Thus when J. S. gave an est to A for life Rem^r to B's eldest son, the ^{Rem^r} was contingent. But as soon as the son is born the contingency was at an end, & the rem^r became vested. But B's son must have been born before the death of A or the est would have failed, for it is a rule that the Rem^r must vest during the continuance of the particular est or "co instanti" that it is determined.

Again A gives an estate to the son of B who should first get married - this is a contingent Remainder depending upon the event of the mar. & vests at the marriage.

Executory Devises & Rem^r } What is an Ex^r Devise? It is an in-
tervention of the courts to prevent the Wills from failing. & no inter-
mediate estate is necessary to support it. & It may given to commence
at any future period, that period nothing so far distant as to create
a perpetuity

Difference between Ex^r Devises & Rem^r; that with the latter, an
intermediate ^{est} must terminate before the the the can commence. but
with the former no such intermediate is necessary, An trust
rests with Devisee or his heirs until the period at which Devisee
was to receive it, or rather the time limited has elapsed, - Even this
appears that both may be given by will

An Ex^r Devise must be such an est. as cannot fall under the den-
omination of Rem^r for if it does it is a Rem^r. & will be so treated.

Qualities of these Estates,. & Potential Rem^r may be
given either upon an est for life or years. I may give either an est
for 20 or life to A with rem^r to B. & the est. be good

But a Contingent Remainder must be limited as an estate
for life. for the freehold must pop out of the grantor at the time of
granting, and rest some where - for a freehold can't be in abeyance
for Lawyers are as much afraid of this as Philosophers of a Vacuum.
- & an estate for 20 is not a freehold

A Remainder must be so created or limited as not to create a
perpetuity the uncertain person or event must be "potentia propinqua
& not potentia remotissima". A grant to the eldest son yet unborn is
potent. propin. & good, But to the eldest grandson, when A has neither
son nor grandson, is potent. remot. & void.

In fact an est may be given to the child of any person in spe, as to the
eldest son of A. But if too remote the est is void as to A for life & to his
son now in spe whose name should be Richard - the grant void.

When the particular estate on which Contingent Rem^r rests, is de-
stroyed, as by forfeiture, surrender &c. the Rem^r fails. "for when the forward,

Exec. De. & Rem. } actions should are swept away the fabric itself must
fall. If the tenant of the particular estate dies before the vesting of
the remainder the estate is terminated & the Rem. fails. This has
introduced the practice of constituting trustees to support contingent
remainders. As where there is an estate given to A for life, remainder
to B to support contingent rem. remainder to D in fee, so that if
A dies of by any means forfeits his estate, the fee rests in a title the
happening of the uncertain event. This was first made use of
in the reign of Charles I.

Executory Devises.

In creating executory Devises care must be taken to prevent
a perpetuity. It must be given during a life in being. So J. L.
may give an est. to A for life Rem. to B & C & D here. But a
perpetuity will defeat itself as if J. L. gave to A for life rem. to B &
then to C & his death to D & C. this is void for it is a perpetuity.

No particular estate is necessary to support an executory
Devise as an estate to A & his heirs on the Day of his moving
This is an estate made to commence in future & as a contin-
gency too - an est. unknown to C. L. for then every estate of
freehold must be made to commence in present even if
it is to be enjoy'd in future - These are not executory Devises
because they are made to ~~commence~~ created by Will but
because they are made to commence in future with-
out any particular estate to support it. 2 Will 176.

2^d Difference between Ex. De. & rem. is that the former may be
a fee simple limited on a fee simp. upon some contingency
As if a man devises lands to A & his heirs & if he dies before the
age of 21. then to B & his heirs - This rem. would be void by Dev.
but is good by Will.

The length of time within which, the contingency should
happen was first limited to a life in being, then extended to

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Ex. De & Rem { 21 years afterwards, then to 21-9 months, ~~and~~ (177).
3. Diff. . . A Rem can't be limited on an estate for life, of
an est for ys. and if the est for ys. be a term of 600 ys., for in law
the life est is greater than the estate for years. But this can
be done by Ex. Devise,

Statutes of Connecticut

The statute of Connecticut puts remainders & executory
devises upon one & the same footing. But Mr. R. does not
think such a statute has been generally adopted by the states
the several of them have.

Stat of Conn. declares that all kinds of estates may be given
by deed or will to any person or persons in esse or to the im-
mediate descendants of those in esse. Which completely does
away that maxim of the law that an estate can not commenee
in future. By this Stat of Conn. an estate can be given to the
youngest child of B not born, but devise can go no farther, —
he cannot extend his dominion beyond the second generation.

There has been a great deal of foolishness in the books
about the legal constructions given to the words "dying without
issue". An estate is given to B & if he should die without issue
then to C. Now if there had never been a lawyer in the world
every body would have known how to have construed the
phrase. The meaning would naturally have been "without
issue of his body" without extending to grand children or 2^d grand
children &c, &c. But according to the legal construction a man
may die without issue an hundred or a thousand years after
his natural death. This law however remains unaltered
in England, but appears to be very much ridiculed & repudiated
at in many parts of our country. "I happened myself to
be employed upon this very question. The cause was tried at

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Executory Devises to } New London. I had to support the
aloud meaning of the phrase, & before I had about an hundred
authorities to support it. to be sure I did not quote them all.

But my antagonist when he came to speak, said he would
tell a story (Ingersol on the Bench) is said he; a number of
years ago, & a man from up here in Woodbury, came down
to New Haven & ask Mr Ingersol, if Deacon Mansfield did
without issue. Why no said Ingersol. here is John Jacob
& a half dozen chil of old Deacon Mansfield, he did not die
without issue. ~~But~~ The man said if the Deacon did
without issue he had an estate fallen to him. Ten or fift-
een years afterwards. Mr Ingersol wrote to Woodbury to the
man & told him he might come down now & claim his estate
for old Deacon Mansfield had died without issue - the man
went down to Mr Barn. & ask'd Ingersol, what he meant - for
he told him ten or fifteen years before that Mansfield, left sev-
eral children & of course did not die without issue - but
says Ingersol the last of those chil died last night & none
of them here left any chil - so the old Deacon did last
night, without issue.

Cases Exemplifying the Nature of Remainders and Executory Devises

1st A. Devises an est to B his wife, for life remainder over
to C. This is a good remainder vested.

2^d A. Devises to B for life, & during his wife, remainder to
the heirs of his eldest son - this son then having no heirs - Now
this is a good contingent remainder but no executory devise for
it has the properties of a remainder.

3^d A Devises his estate to his wife B for life remainder over to
C. & his heirs forever, but if his son D paid to his son E £500 within

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Lev. 2 Devise. Cases { three months after his mother's death - then to
D & his heirs forever. This is a good Executory Devise. for a
fee is limited on a fee 10 Mod 420

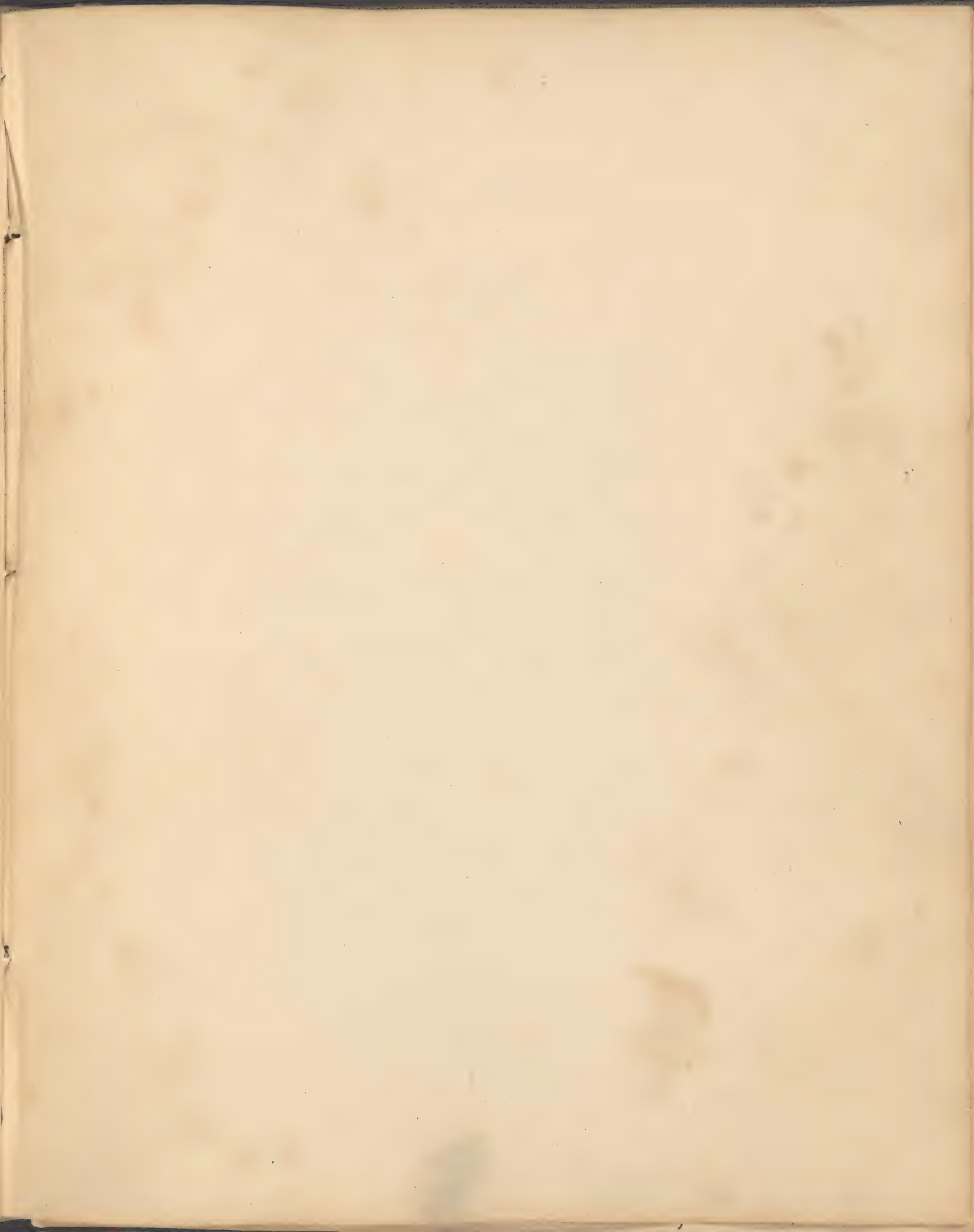
4th A devise to B & his heirs forever, but if B dies without issue
living at the death of his heirs forever. - A good executory Devise. &
a leading case Cro J 590.

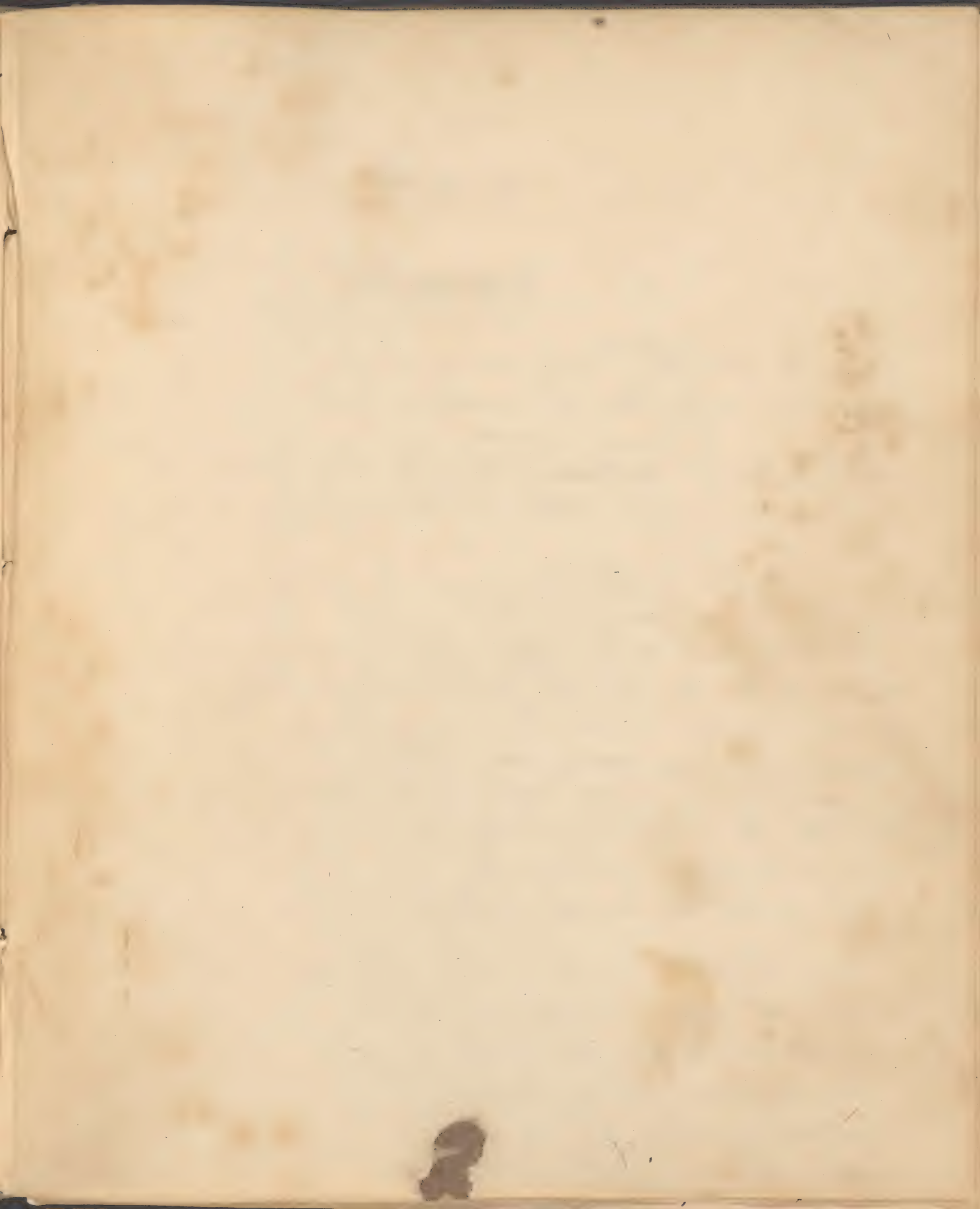
5th A devise to the heirs of G. at J's death. ex Desc &
good. 1 Sal 226. Cro E 878.

An Ward in this place ~~between~~ with respect to the distinction
between contingent & vested remainders. A Rem^r is
contingent because it may rest, for a remainder vested in
interest may never rest in possession. The distinction may
be drawn thus, if there is a capacity in the remainderman
(i.e. if he be in esse) to take at the time of the creation of the rem^r
it will be a vested Rem^r. But if he is not in esse he will
not have capacity to take & therefore it will be a contingent
Remainder.

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Handwritten text in a cursive script, likely a letter or a page from a manuscript. The text is mostly illegible due to fading and blurring.





31/11

Law of

The laws of ~~Parent~~ ^{of the States} except two, in the U.S. have gone upon ground entirely different from the Eng. New York & Mass. have gone upon the Eng. system

Most of the States have adopted the C. G. R. as respects
personal property the ^{transferable} ~~losses~~ of them over ordinary real
property

Eng. Laws as regards Person^{al} Prop^{erty}
 & knowledge of this is necessary for the
 Justification of our own Laws regulating the descent of Real.

But of Chas 2^d, provides only for personal prop
but we have adopted it - as to real - it provides that
if a man die intestate, the estate goes to the issue
if intestate & legal represent, & if neither, every body
else if there is no issue, it goes to the next
of kin - Now here the debt are supposed to be paid
or there are none - & the widow is left out of the
Question

Now when we know who are the next of kin
 & who are the legal Representatives when there ^{any} is no issue
 we know how to distribute the estate, according
 to law; The mode then of determining who
 the next of kin are we will enquire into, & explain
 the Terms -

(21)
if there is a word in the Eng. law which is not in ours. If there
is such a case that, that word would make a diff^y the word is
to be adopted.

Terms.

^{1st} The next of kin - in the descending line
 ex. J. A. to his child, ^{counts} or, to grand child then, Great
 grand child then &c. & he that is nearest to him
 takes when J. dies. In ascending ^{means} the same only
 counting one up, & Father one, Grand F. two &c. &c. there.

It is in the collateral line that difficulty
 arises. In this line, we count up first to the com-
 mon ancestor, & then down again to the person
 sought. - Now we must know the line of

J. states the direct count from John to Roder, & from Roder
^{to be} the common ancestor - now count down to George, then
 George is the uncle. - Cousins, Uncles & Aunts
 & nephews & nieces are all in the third degree, lastly
 & sisters are all in the same degree is first.

What is the degree of J. son of A. to B. the son
 of J. A. up to J. or A. to Roder & the common ancestor from
 Roder down to D. 3 then to A. 4 then A & B are
 in the 4th degree of kindred

What kind of George (if the uncle) son of J. A. counts from
 John to Roder & to Lot 2. the common ancestor, from Lot
 to G. then to son B, then G & B are in the 4th degree
 now if the uncle was to give B next to him
 there would be no difficulty, as we see.

Rule when ever they take, by next of kin
 that takes per copartem, not by Representatives or stages.

This mode of computing is established law in
 the States in question have determined this to be ^{the} law
 & when we have no law which reaches the point

(a) as before is always hard to say, but - Now in
 the case next of kin is next of kin

(d) therefore he may claim by C.S. which regards proximity of
blood not quantity

There is another branch to this rule, to wit to
Legal Reps. Legal Rep^s are those who take in right of
another of nearer degree of him. - for example

If I miss aimed of an estate, it is to go to his
 while they are A B & C, they take per capita. They inherit
 all living - now it was found when J. S. died. They
 are to take by next of kin & legal repres. D & E take
 what their father, ^{B dies} would have taken, ^{so} I would
 take what his father, ^{B dies} would have taken. now C
 is dead & living ^{D & E} & I & C, there they are all, take
 in there are right in per capita, not by rep.
 reservation for there they take per stirpes - but
 when they all stand in the same degree they
 take per capita; and take only by stirpes, when their
 fathers or mothers of some of the child are dead & others living.

Rule. When if the old stock were all dead
I would buy that Phil^l note per Rep. but when
the old stock are all dead they take per estate
of J. L. dies his children take, but they are now dead, the Gov^t Phil^l note

Now if all the ground & heaven are due to the
Great & Good God by the same rule, the Rule of Repⁿ:

This Rule & Indult is the same in all the States, of the U. States.

Now there are no issues, but J. A. left to the brother
 & so on upwards. Then goes to the next of kin, ascend to court - from
 J. A. Reuter and on to Mary his wife in. My Stet
 Chas. R. & Mary both equally but if Mary were it -
 next to her husband. Now here Reuter & Mary
 are dead, the next who is to him; he has brother &
 sisters, & some of the half blood, but the Stet does
 not include them, ^(c) now from J. A. to R. & then down to the

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is true that to lose of the half that is two, but B. is
dead & live at the same time. now if I take what I have now
here to me, now supposing that all I had this
child take what the father would, ^{have taken} but when the
old man is all dead. the child ^{take} has what
they all standing in the same degree, - & all of the
same degree can take but God-father is of the second degree
he takes ^{all the} ~~the~~ ^{what} he is dead. Now the J. J. Foster father
he is in the 3^d degree, the same with the children & N. H.
therefore he comes in for a share.

Now ^{it is a rule that} the Repⁿ is not to go beyond the brother
 & sister Phil. Then ^{and} grand children ~~are~~ ^{not except} rather her estate
 J. is dead, J. S. S. & J. W. Doe, ^{are alive} now in the first row, the
 W. Diego, J. S. S. & J. R. lots, but J. is dead now and leave
 Phil^W & B. ~~then~~ S. C. & J. W. Doe left D & E now
 the old stock are all dead. A B C D E & F now take not
 what the father would have taken, ^{but pro capita} it is dead & leaves
 a child G, he can take nothing, ~~but~~ Repⁿ does ^{not} go
 in collateral line further than B & C ^{die} now B ^{die} he left H
 who takes nothing. C is dead & left K & L. who take
 nothing. D & E are dead & left childⁿ M & N all
 the whole what for there are no out of her after
 the old stock is gone. & they then take pro Capita.

Lot L. is living & he takes an equal share.
~~now~~ ^{now} is dead & Joshua is living, John Roe & I are all
 in the 3^d degree, then Joshua takes with the other
 but now is Gorge who is ^{of the 2^d degree} ~~not~~ ^{not} the take, but dies
 then Phil come in again.

In collation with my note only as for a Book
A Listers by Representatives; And the children of these
Deceased Brothers & Lis. get nothing unless, the Broth & Lis are
all dead. then they take p^r Capite.

1. The first part of the paper is devoted to a general
discussion of the problem. It is shown that the
problem is of great importance and that it has
not been completely solved. The author then
presents a new method for solving the problem.
The method is based on the use of the
variational principle and the method of
perturbations. The author shows that the
method is very simple and that it can be
applied to a wide range of problems.

2. The second part of the paper is devoted to a
detailed discussion of the method. The author
shows that the method is very simple and that
it can be applied to a wide range of problems.
The author then presents a new method for
solving the problem. The method is based on
the use of the variational principle and the
method of perturbations. The author shows that
the method is very simple and that it can be
applied to a wide range of problems.

3. The third part of the paper is devoted to a
detailed discussion of the method. The author
shows that the method is very simple and that
it can be applied to a wide range of problems.
The author then presents a new method for
solving the problem. The method is based on
the use of the variational principle and the
method of perturbations. The author shows that
the method is very simple and that it can be
applied to a wide range of problems.

4. The fourth part of the paper is devoted to a
detailed discussion of the method. The author
shows that the method is very simple and that
it can be applied to a wide range of problems.
The author then presents a new method for
solving the problem. The method is based on
the use of the variational principle and the
method of perturbations. The author shows that
the method is very simple and that it can be
applied to a wide range of problems.

5. The fifth part of the paper is devoted to a
detailed discussion of the method. The author
shows that the method is very simple and that
it can be applied to a wide range of problems.
The author then presents a new method for
solving the problem. The method is based on
the use of the variational principle and the
method of perturbations. The author shows that
the method is very simple and that it can be
applied to a wide range of problems.

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As to the stock, I shall take nothing before the old stock is all out of the way

Let J. Jones place the mother in the place of a sister - so that she will keep up the stock; I more remote than that of her husband cannot take during her life - she being in the place of a sister, & claiming in case of the death of her husband.

Distributions under the Statute of Chs 2

Let J. Jones ^{die} respect personal prop^y. This is the Stat which the laws of almost all the States of America in the US & that of Jones affects only in another & that in certain cases.

1st J. Jones ^{is dead} intestate & left children ^{B & C} & other relatives in the ascending collateral & descending lines, now as long as any person can be forced in the descending line no other can take, if there are grand children they can take to the exclusion of the descending line, neither can they take by Rep^y if the person living.

2^d A is dead, ^{before the father} & leaves child D. E. May take as representation what A would have taken had he been alive. B & C take each one third, D & E take the other third

3^d B is dead leaving a child F, F takes what B would have taken had he been alive

4th C is dead, leaving child G & H, now they all take per capita. The estate being divided into six shares, each child takes one - the old stock are all gone

5th Case the same B & C are living, A is dead and also his child D, but D left child W & L, they B & C take as before ^{each 1/3} the last six goes to W & L in each one 1/2 of what their father would have taken which equal 1/2 & taking the other 1/2 of the estate. All the child, F & G's child, are dead, leaving children in unequal numbers, some more & some less

(a) The only qualification necessary to inherit is to be a Descendant of the Testator, - and a posthumous child, inherits equally with the other children.

(a) - & Rep. in the descending line goes on ad infinitum, in this case each gg child takes his
of the J^d. Div ~~intestate~~ ^{intestate} ~~Mort~~ issue, his Estt
& Mother ⁱⁿ, G.G.S., John his brother L. Phos Sarah S. & John Roe
A Child of Phos A.B. Child of Sarah C. Child of
J.R. D.P.F., the Nucleus of J. Lou G.L. Eds., -
ant- Alice Brown Sister of Mother Mary A
G Child of George, W & I Chd of Edmund W
JL chid of Alice - Mr Child of A. R.C.
Child of B. & B Child of C, L.R. Child of D
P.V. Child of E, Wx Child of F. were under
Does the estate go to No?

9th Nov. Number 8 Lot. are Dead, now there
are none in the first degree because it goes to
the second May John & his Sarah brother &
sisters,

Be sure as ^{before party} Sarah Mary & Grace are dead
so that none are living in it & the estate
goes to A & B this of Prov., C. Mich of London, D & E are not Georg D. H. H. H.
& to go there live all of the 3^d Degree & 1st to

per capita, non sicut chil of Eros Lant & c.
do not take of steps. but as next of him, the ad
stock being removed, the chil do not take by Rep. but as next of him

12th Lol is living he is of 2^d Degree. Therefore
he takes the whole all other of the Relations are
of the third Degree.

13^d Lol & Jo have one Dead, & so is Ed Chil
of Eros ^{or leaving M.} The estate is divided among, B C D E
Dads are the Chil of Lera, John & Eros.
among, when it is divided, the other Edm^d
per capita.

14th I want to take for he is Grandchild, & want to take
her Rep. for Rep in collation extends no further than to Brother's Child

15th The same, B C D E F are Dead. It then
goes to George Ed & Alice who are of the 3^d Degree
while, ^{the child of} B C F are one of the 4th, & they want to take by Rep. for that
extends only to Brother's & Sister's child while they are Brother's & Sister's Grand Child ren.

16th George Ed & Alice are Dead now the
brothers of Ed Chil take for there are none others,
who are next of him, the old stock are gone, & the Chil
of Geo. Ed & Alice will take with the Brothers & Sister's Chil, for they are all of the 4th ^{are aging}

17th George Ed & Alice are Dead now the
the whole for Ed Chil's of 4th Degree - but ^{are aging} George
dies, the Chil of Ed take for next of
him, - George has of 3^d Degree - with the Chil of George

The construction of the Engl. Law is always
used when one fails in pt of himself
- Under the 11th of Chas 2^d, the widow always
received her 1/3. & the residue ^{next} to be distributed per
capita - when all of them are of the same Degree
of kindred, but if they are not, they take per stirpes

(a) The law considers the person as a child in ^{Ver 15.8}
as men as in esse - but if a philosopher could ^{4 Ben Ed 285} ^{1 Ver 115}
that such a child was not in esse there, is no difficulty in supposing
that the estate rests upon the death of J. S. & that is much more dis-
posed out of the child as to give the next child or equal share.
but according to the Judge the title does not rest until the distric-
tion, the equitable right rests in the children immedi-
ately upon the death of J. S.

Now the Stat. excludes not the half blood
(2) for they are equally near to the blood. Prochman v. ^(a)
children are allowed their share of Father's estate.
now there could be no difficulty in this account in
not of law for the distribution is never made until
a year after the death of the Father. The objection
that the prop. rests immediately in the children
upon death of Father avails nothing, for the estate
properly rests in the Administration, ^{in person of the Judge.} & though
the child was not in esse at the time of the death of
Father, still he is when the distribution is made.

By Stat. of Chas. if there is no issue, the wife takes 1/2
of the estate, the other half goes to the next of kin. & third Rep.

When an estate is to go to next of kin & equal Repre-
sentatives, it goes very differently from what it would
were it to go only to next of kin. Where and this Stat. pays
no regard to the preference of Males to females in this case.

The Eng. Decisions have preferred brothers & sisters to
Grandfathers, ^{who is in the same degree with them.} & this is the only instance of their preferring
the symmetry of the Law. Now the Father always
takes to the exclusion of all others of the same degree.

Grandfather will always exclude the nephews &
nieces; Children never take per Rep. in the 4th degree,
Ld. Mansfield, in the case of preferring brother & his to
Grandfather, observed, that it was right, & the Judge
agrees with him & believes he was influenced by
the maxim *Stare Curiae vs Curiae* in 3^d & 4th Decisions, &
and where it is convenient that it should be so, L^d H. quot. D^{ns} of Decisions.

This Stat. altered by H. Jones, ^{2^d} that the mother
is degraded to the second degree, & is now taken equally
with the brothers & sisters. & if the brother & sister

(c) These rules of distribution do not apply to a wife's estate who dies in the life time of her husband. By the 14th of ED 3^d of Hen 4th the ordinary must grant administration of personal prob to the husband or if he dies before the granting of adminⁿ to his Ex^{rs} or adm^{rs}.
2 Bl 504, Cro E 106, 10 W 341 - 3 & 4 526.

are all dead. She preserves the stock thus before the fact she would
have taken the whole, but for that it is notes only, as cruel study with the best of her
ⁱⁿ ^{the} ^{notes} ^{exclusive} of the ground for the
long in such case considered as of 1st degree

Proximity, not affinity is agreed to allow of
Intestament, & the wife of J. S. children can't take, but it will go to the
ascending line in preference.
In Eng. the prop. in default of heir goes to the
king, but as we have no such character in the country
I give to the administrator, he is liable for the debt & if
they are paid no one appears as claimant he holds. — as it may go to the next of kin.

(a) 1st The mode of computing kindred according to that of Eng. both in Ecclesiastical & Chancery is the same as ordered by Civil Law. (1 Ves 334-5) Chancellor says. The rule of computation is the rule of Civil Law & is the only correct method. The question before Mrs J Doughton of Little. A daughter of aunt. They were both of 1st degree, it was decided they stood ^{quite equally} The same description (1 B & Wms 41, 2 Ves 214). Note equally, Pri¹ Chan. 50, 2 Bl 518-520, 2 Vern 335 1 PM. 25-595, 2 Atk 105 Co Let H. E. 3, ^{anyway} ~~Shoreliff~~ ^{Shoreliff} in walls 749.

2. Distribution to be made in the President's
his corrections per capita sometime per sheet
see, Lovelaps 74, Browns, Civil Law 3 874-5, Law
thus expressed, when the interests wh^{ch} we all saw
whether the one has two or three & so, the latter being
of the law, and they of Civil Law in their own right
of the same would be the case of G G Civil & the
would take per capita, as the G Civil did before

2^d Portsmouth Child Dr. to take an equal share 27th 1857, 2 Att 113^d with the other children re-Brown & L. 28th 1857, 1 Dec 45th, the poor child, maid^d as in spec

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^{the claimants are}
4th When (2 Ves 213) all of the same kin they take
per capita, ^{where some are more remote than others that it is, per stirpes see 4th}
Chancellor supports the position

Pre Ch 54. A man (say A) had three daughters, who were
dead, & one left 3 chil, one 2 one 5. The decision was
they "do not take per Rep., but by capita"

1PW 595, 3PW 30, 1PW 595; 1Atk 458,

5th That Reps continue in infinitum, see 1PW 127.
among lineals

6th That it can not extend (1PW 25) beyond the
first of kind. of brother & his chil, (5PW 594,) Dispute
between a uncle & aunts child. The child was
excluded. (- 2 Ves 233, - 168,) seems to be contrary to
the doctrine but it has been considered as an
authority 1PW 208

Representation does not reach the 4th Degree (1PW
594.) The doctrine above is held the same in the
1Atk 454, 2 Ves 213,

Chancery has held the rule of Civil Law as the rule of consanguinity
2Ph 527, Constant letter 1 Feb 252 Grandfather & mother is 8th
and 7th (1PW 111, 1 Ves 215, Judge knows of

7th That relative of (1 Ves 403) the half blood takes
equally with the whole. Bare decision, ^{in Smith & Bracy} about six
years after ^{the passing of the 4th} act was made, (1PW 403) they should take
a half share (2 Ves 124, 1PW 33, -) but it is not now
considered as law, as settled in the house of Lords up on appeal

8th That the Distributory shares vest immediately
in (1 Sol 229, 2 Ves 710; the person who has a right in it. 2Atk 118)

9th That all in the same degree (1PW 59) take
equally who are of the same degree of kin, & Barne C
Law 349. Lowndes 74

(B) Ex. The estate of J. descended to his children A B & C & A died before he was 21 & unmarried. his estate received from his Father, goes to B & C. But if A arrived at 21, and unmarried his Mother Lucy would then if alive have taken with B & C.

(C) to wit. Father Brother or Sister. - in this it differs from Case 2^d for the mother exclude the children of Brother & Sister.

Difference between the St of the various
States & that of Cha^{II}
New Hampshire.

St of N Hampshire does not vary from St of Cha^{II} except in one case, so that if you are intestate person not under Cha^{II}, you are dead under St of N Hamp. there

It provides for the distribution of real & mov. that it shall go to the children & their legal Representatives
In the ascending & descending & collateral line it shall go to the next of kin ^{& legal Representatives, as in Cha^{II}}
(b) Differ - If any of St, Phil shall die unmarried before 21 y of age, it goes not to Mother Brother & Sisters but it goes to Brothers & Sisters only - ^{unmarried without issue} but if they die after 21 y of age, it will then go to Mother, Brothers & Sisters - equally.

Massachusetts

This St provides if an one dies intestate or any ways intestate it shall go to child & lawful issue by right of Rep. if there are no child it is distributed by St Cha^{II} & if there are none of that kind it goes to Father, & if there is no Father, it goes to Mother as under St of Mass to Mother, Brothers & Sisters & their legal Reps, or to Mother alone in default of right to him, & if no Mother to the next of kin in equal degree.
(c) That this makes no provision that if there are no child it goes to the Mother, but St. of Mass ^{was by right} goes to the Mother, & if no Mother it goes to next of kin ^{nearest} the nearest, now there is no Mother, under St-Cha^{II} it goes to Uncles Aunts Nephews & Nieces equally - but by that Rep Differ that Nephews & Nieces exclude

the Uncle by the provision that they claim that
the nearer ancestor, Isaac his ^{son} ^{from} Ancest.
we go no higher than Peter Reuler, but in speak-
ing for Gen^l Arc of Uncle we must go as high as y^e Peter
Salomon.

New York.

This it does not go thus like Mass^{ts} other State
it provides for the ascending line no higher ^{than} Father
in the descending as ordered by Statute of Chs 2^d. In the
collateral no further than nephews & nieces. All
other suppressable cases are governed by the C.L. of Eng.

For Descending line the same as the St of Chs.
This State. & real prop. here descends in the desc^d line in pref-
erence to all others, & no other can inherit as long as any issue of Ance^l can
be found however remote

Ascending line the Father Ance^l, next the
Brother. & when there is no Father it goes to
Brother & his & then Children

Some of the States made the same provision
as the State of N.Y. to wit. If it came by descent
it could go to no one but he who was of the blood
of the first owner — Ex. If I had six d of Blue
coat it came from Reuler, but Reuler is dead
Brother & Sister of I have a line to wit Ives & Sarah &
Sandra of the 4 bloods Chil. of J & Sus Roe. but it can't go to
them for they are not of the blood — it will go
to Reuler —

(C) It is observable that they never used the terms "next of kin" or "legal Rep. or per capita & p. stirpes": but point out in detail, who shall inherit & what shares they shall take. The result is the same, regarding real prop. as the St. Ch. points out regarding per. prop. with this exception —

In this St. there is an express exception of entailed estates. Such estates will descend as they did before the enacting of the St. They cannot therefore ever be inherited by any relative in the ascending or collateral lines, for such estates go only "to heirs of the body" of the tenant in tail & when the entailment is spent for want of heirs, it returns to the grantor or his heirs who held in fee. But when it descends to "the heirs of the body of the tenant in tail." The same persons who are heirs of a fee simple estate when the owner of the fee simple has chil. will be heirs of the fee tail, governed by the same law as the law of descent of fee simple, only regulating the descent per formam doni.

The new sized of White were subject be bought
who has it go to, now here John & Susan Roe are
Brothers & Sisters & may go to them. At the time need be only
Brothers & Sisters.

Of the blood - content about it were here
said ~~that~~ it has reference to the person who was de-
scended directly. This was the old meaning but it
would be ridiculous to use it so now - it now
seem only "related to" or "of" him to "k"

(C) Now Broth & Lis are all Dead here is a Difference
from the 1st of Chas. It means per capita; but the
republican & success to the per stirpes. & this is by
express provision of St.

Now is John, or child not Brothers & Sisters & no
child of the ^{or left} - & no more than the C & of Eng. but
there are uncles.

Rhodistland

The provision of St of Rhodistland success all the
estate the decedent had in land or real estate of
any kind. It must go to the child in the first place

Now when there are no child, it must go by
equal shares to the next of kin & then equal Rep.

If any child of intestate dies the brother
is degraded so that she takes with the Brothers & Sisters, of second.

Left the same as state of N Y as it differs
from Chas. 2. It goes only to the person ^{who of} the hon-
ored from whom it came. The Estate can be sent
of Uncle George - It goes to Broth & Lis of J. S.
Purchase estate goes to Broth & Lis expressly

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no preference given to half blood - It provides
provide that poor child shall take equally with the other children & that
mode of computation of kindred shall be by the civil law.

Diff between it & that of N.Y. - That they do not take
per stirpes; but according to that of Cts. - They take
per capita. & D.C. such a share.

Rule. The child of decedent shall take her share
while any of old stock ^{are} alive but when they are
all gone they take per capita

Another Diff. The Act provides that when the
father is dead, the mother takes ^{not} the whole estate
nor when is dead, then it goes to ^{her} the mother
& brother & sister. Mother is no where degraded at all
when the father is dead

South Carolina

By the Act it is no necessary that the intestate
should be actually in possession of real estate. He
it requires that it is enough that he is entitled
to or in any way interested in it - no provision made for est.
tail, no provision made for estates for life of another
nor for estates for years

as for years for it is personal property
it was it was unnecessary

Suppose I die entitled to real estate & a
child & a wife with many other relatives of
ascend. & collateral kindred, the Act provides just
for the descending line only, differing in that it
gives $\frac{1}{3}$ absolutely to the wife, & the other
 $\frac{2}{3}$ are to be distributed among the child & the other equally

It is said living a child C, or dead leaving I & G
It provides that living descendants should take but
their fathers would have taken, they always take the
shares of all their fathers are dead leaving Child.
A dead at the time of J. S. death, now as long as
there is a living descendant to be found he will take
to the

1st If left no issue but left Father's property, both
a whole & half blood, John & Susan now a half blood
the child of J. S. or Child of John as living, as well as I
both to J. S. which Brown the mother has, & the
a widow. The widow takes to the living no children, the father
the other half

only one half to be divided, the 1st expressly gives
the father to take the other moiety

2nd the same only Father dead, the 2nd half now
goes to the mother

3rd The widow is dead, the Father's mother & Mary
the mother is living, now by 1791 the Father now
has taken the whole. but by 1797 the Father is
dead with the Mother & his sister in equal
shares

There will be a dispute on this Act for they
have given preference to the whole ^{and the} half blood but
have they have provided for brothers & sisters.

The court are not to

و اما در مورد این که در این کتاب
چندین بار از کلمات و عبارات
استفاده شده است که در کتب
دیگر نیز دیده می شود
و اینها را در این کتاب
نیز به کار برده ام
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Suppose it had been devised ^{to meet & finish} we would say that
Phos & Sally would take the whole & that Sarah &
John & Susan should not take any

But the ~~first~~ ^{second} the computation I have had to be
made according to the Civil Law, which

- Ruth is dead. Her Mary takes with her
equal shares

9 Mary dead & widow living. The widow
takes on half in fee the Phos ^{all}
the whole blood shall take the ~~the~~ half by capita

10 Phos is dead & left his child in his power
the what his father would have taken

Sarah is dead & John Sam & Susan. The
widow takes $\frac{1}{2}$ & Phos will take $\frac{1}{2}$ of residue &
all the child of Sarah the other $\frac{1}{2}$ - in contrast
with the 1st of Phos. - but it is varied from here
entirely - for the child takes $\frac{1}{2}$ estates, there
is no limitation in this Stat. that there is in the

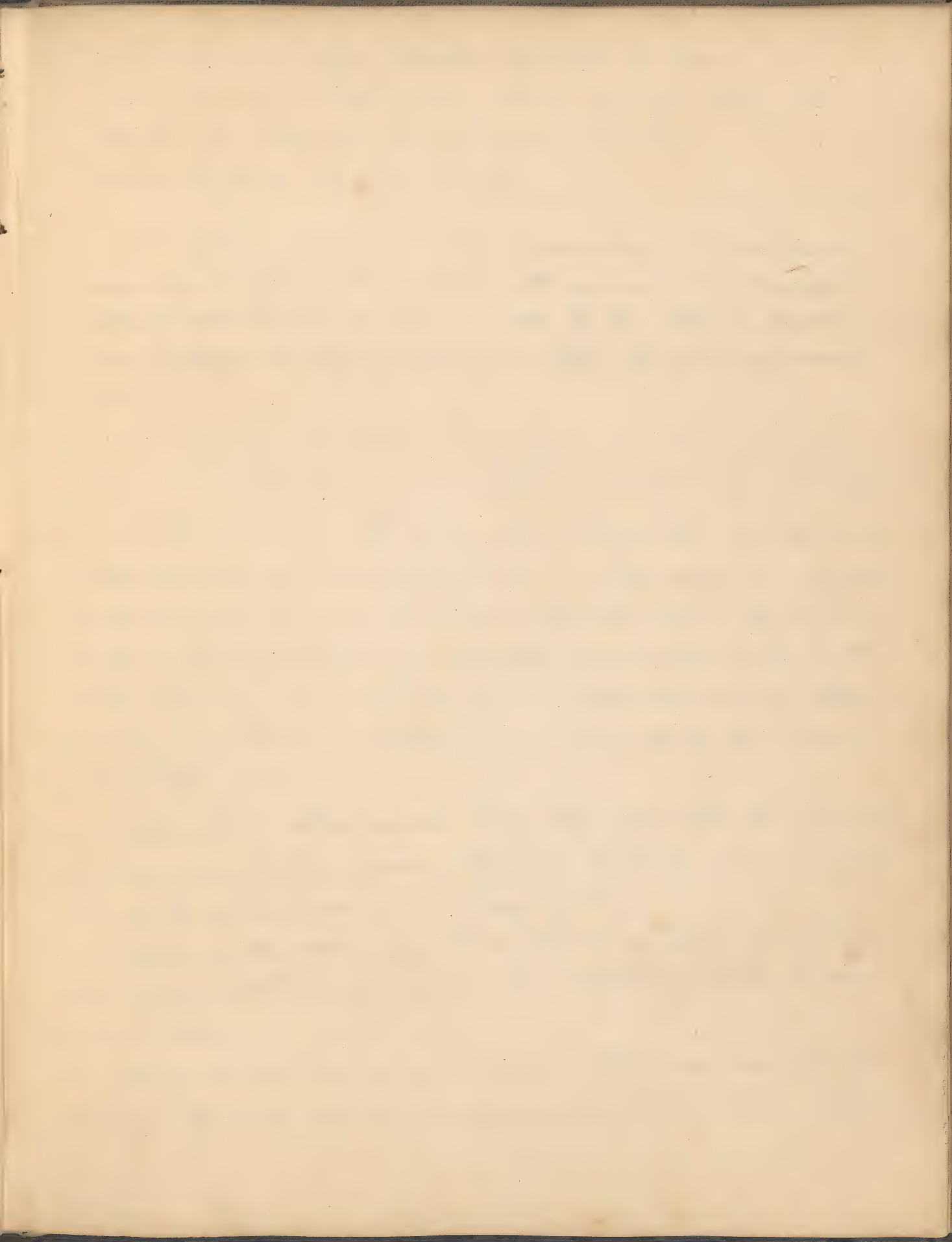
12 ^{the} The same. only Sarah John & Susan are
alive not St. provides that Broth & his children
shall take equally with the child of Broth & his
of whole blood. so that he takes one $\frac{1}{2}$ & one
John & Susan ^{each} each one share

13 The same but Phos & Phos are dead the
the $\frac{1}{2}$ goes to the $\frac{1}{2}$ blood Sarah John & Susan.

14 ^{the} The same only Sarah John & Susan are dead
but Sol is alive, widow takes the Sol & the
 $\frac{1}{2}$

Handwritten text in a cursive script, likely a letter or a page from a manuscript. The text is written in a dark ink on aged, slightly yellowed paper. The handwriting is fluid and continuous, with some words appearing to be underlined or emphasized. The overall style suggests a historical or personal document.

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13th The same but Mother & Father is Dead
now Mother that when there are no Chil, &c
Both his Wills &c. it goes to Sol.
no preference is given to her

16 Father is alive, the last order that lived
ancestor shall take, now the question is shall
they take the Brothers & Sisters, - the Judge thinks that
Sol. & Alfred should take the estate between
them.

17th The same only 2 the child of Saml, R.S. the child of John
Now F.V.W. the child of Susan & the Grand Child of Thos. G. & the
Grand Child of Sarah. the alive. The Widow takes 1/3 of the estate
& the other 2/3 goes to the next of kin. - here may be a dispute
for by the civil law we shall find that the child of the Brothers &
Sisters of the half blood are nearer than Grand Child of the Brothers
whole blood & we have seen by a former state the child of Brothers
&c of the whole blood are to take equally with the Brothers & Sisters
of the ^{half} whole blood.

18 But Geo. & Alice are also living they will take equally with
the child of the Brothers & Sisters of the half blood in exclusion of grand
child of the whole blood who are ^{not} next of kin.

19 Case is the same only 2 R.S. F.V.W. are Dead all leaving
child & Geo & Alice are living. Geo & Alice exclude the last
named child.

George is Dead leaving child 1 & 2 & Alice is Dead leaving
child 3. they will take equal shares with F.V.W. i.e. her capital

My dear Mr. [Name]
I have the honor to acknowledge the receipt of your letter of the 10th inst. in relation to the [subject] and in reply to inform you that the same has been forwarded to the proper authorities for their consideration.

I am, Sir, very respectfully,
Your obedient servant,
[Signature]

I have the honor to acknowledge the receipt of your letter of the 10th inst. in relation to the [subject] and in reply to inform you that the same has been forwarded to the proper authorities for their consideration. I am, Sir, very respectfully,
Your obedient servant,
[Signature]

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[Signature]

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Your obedient servant,
[Signature]

Descents

20th Case the same only I is dead leaving chil 4 & 5 then the 9th chil of the brothers & sisters viz chil of Q R S T V W will take with 1 & 2, & 4 & 5 will take nothing.

All the grand chil of brothers & sisters are dead leaving Chil all the descendants of Alice are dead. 1 & 2 who are living exclude these 9th Chil of the Brothers & Sisters.

Brothers & Si. are all living. now the estate although descended from an ancestor, descends the same as a purchased estate.

21st J. died leaving A & B then C was born posthumous. there is nothing of this in the St. it say "if the intestate left one or more children" now did J. leave C? by the com. Law C was not "in spe" by the civil Law he was. & that is the law now in the distribution of Eng. Where real & pers.^l prop. are distributed in the same manner. if C would take personal he ought to take real property — I think he ought to inherit.

When the Widow & more than one child is left, the Wid^w shall take $\frac{1}{3}$ of the estate & the Chil the other $\frac{2}{3}$. Here the St. does not say in fee simple as it does in other places when it gives the Widow half. but she must I think take in fee, for the word estate which is used, means all the interest of the intestate.

When the St. provides for "next of kin," the next of kin shall exclude the more remote, but when it provides for ancestors all shall take together who are ancestors.

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Descent

Connecticut.

Distribution of per. & real prop. of every description goes by the
It of Chs. in the ascending line

All prop. both real & per. except that which comes by devise descen-
cent or deed of gift from some ancestor or kindred shall descend to the
brothers & sisters of the whole blood & their Chil. then to the Parents up to
the half blood up to the next of kin & their ^{equal} reps. preferring the whole blood

The words "legal representatives" in this I say Judge Reed are
evidently misplaced for they render the provisions of the It in some
supposable cases nugatory; instead of following the words "next of kin"
ought to have been placed immediately after the words "brothers & sis of the
half blood"

That which comes by Descent goes otherwise, it must however have
come by Descent from some ancestor, to change the order. It goes

To the Brothers & Sis, Parents then to Brothers & Sis of the half blood then
to the next of kin & their legal representatives. No representation is
allowed beyond Brothers & Sisters Children

1st Chas & Sarah of the whole blood & Rich^d Stiles also of the whole
blood brothers & sisters of the intestate are Dead leaving Chil. A, B, C
D, E & F who are claimants of the estate of J. who died inter. & without
issue. I apprehend that A, B & C do not take as Rep. to their Parents
but as next of kin to the intes. & in the case put Reuben & Mary Father
& Mother of the intes. being alive Reuben would take the whole of the per.
estate & the real would be distributed equally to the Father & Mother. If
neither father nor Mother was living in that case the estate would
go to Saml Stiles John & Luc Now Mother & Sis of the half blood.

W. N. 1845

The first of the month of January 1845 was a day of great
calm and mild weather. The wind was light and the
temperature was pleasant. The sun shone brightly
and the clouds were few and light. The water was
calm and the boats were out in the harbor.
The second of the month was a day of great
calm and mild weather. The wind was light and the
temperature was pleasant. The sun shone brightly
and the clouds were few and light. The water was
calm and the boats were out in the harbor.
The third of the month was a day of great
calm and mild weather. The wind was light and the
temperature was pleasant. The sun shone brightly
and the clouds were few and light. The water was
calm and the boats were out in the harbor.
The fourth of the month was a day of great
calm and mild weather. The wind was light and the
temperature was pleasant. The sun shone brightly
and the clouds were few and light. The water was
calm and the boats were out in the harbor.
The fifth of the month was a day of great
calm and mild weather. The wind was light and the
temperature was pleasant. The sun shone brightly
and the clouds were few and light. The water was
calm and the boats were out in the harbor.
The sixth of the month was a day of great
calm and mild weather. The wind was light and the
temperature was pleasant. The sun shone brightly
and the clouds were few and light. The water was
calm and the boats were out in the harbor.
The seventh of the month was a day of great
calm and mild weather. The wind was light and the
temperature was pleasant. The sun shone brightly
and the clouds were few and light. The water was
calm and the boats were out in the harbor.
The eighth of the month was a day of great
calm and mild weather. The wind was light and the
temperature was pleasant. The sun shone brightly
and the clouds were few and light. The water was
calm and the boats were out in the harbor.
The ninth of the month was a day of great
calm and mild weather. The wind was light and the
temperature was pleasant. The sun shone brightly
and the clouds were few and light. The water was
calm and the boats were out in the harbor.
The tenth of the month was a day of great
calm and mild weather. The wind was light and the
temperature was pleasant. The sun shone brightly
and the clouds were few and light. The water was
calm and the boats were out in the harbor.

Descents
Connecticut

in equal shares. If there were no Parents or Brothers & Sis of the whole or half blood living then A B C &c would take an equal share per capita & if George & Edmund Stiles uncles to the Deceased, were living they would take equal shares with them.

Case would be the same if the gr^d father Gotham was living he wd. take an equal share with them. but

But if Solomon Stiles the grandfather was living he would exclude A B C to Geo. D. & Gotham & take the whole estate real & personal

These Rules apply to estates held by the intestate or purchaser estates

If A Stiles held the estate by Descent Devise or deed of gift from some ancestor or kindred it must go to the Broth & Sis. of the intestate who are of the blood of the person from whom it came & their legal Rep. & for want of such relations to the Child of the person from whom it came & their legal Rep & for want of such relations to the Broth & Sis of the person from whom it came. in failure of these it is to be distributed in the same manner as other estates are which are not acquired by Descent, Devise or deed of gift from some ancestor or kindred

The words "of the blood" in the St are not used in the feudal sense meaning "lineally descended from" but merely "related to by blood" —

The first thing I noticed when I stepped out of the car was the cold. It was a sharp contrast to the warm blanket I had been sitting under. The air was crisp and clear, and I could see the snow-covered trees in the distance. I took a deep breath and felt a sense of peace wash over me. The world was so quiet, and I was alone. It was a perfect moment, and I knew I had to make the most of it.

I walked slowly down the path, my boots crunching against the snow. The trees were bare, their branches reaching out like skeletal fingers against the white sky. I could hear the soft rustle of leaves in the wind, and the distant sound of a bird's song. It was a beautiful melody, and I felt like I was part of it. I closed my eyes and let the music fill my mind. The world was so peaceful, and I was so happy. I knew I had found what I was looking for, and I was going to stay here for good.

I had found a place where I could be alone, where I could be myself. It was a place where I could escape the noise and the chaos of the world, and where I could find the peace and the quiet that I needed. I was so lucky, and I was so grateful. I knew I had found what I was looking for, and I was going to stay here for good.

Descents. - Terms.

Explanation of Certain Terms used in the Sts of these U.S.
respecting Descents.

1st Whenever the terms next of kin are used as they are by several of the States I apprehend they are to be understood precisely as they are in the Eng. Courts. For these terms had by the Eng. Sts certain definite ideas affixed to them, long before the Sts of these U.S. were enacted. whenever we find terms rigorous Sts which are familiar to the Eng. Law. & not explained by our Legislatures, the presumption is they are used in the same sense as in that from which our system of jurisprudence is formed. By St. Hen 8. the Ordinary was directed to grant administrators com doto the widow or next of kin to the Intes. & this next of kin was computed by the Civil Law which is computing from the Intes. ascending, to each ancestor one, as from J to Father one to J Father two &c. In the collateral line from Intes. to the common ancestor then down to the person claiming. -

"Next of kin & their legal Representatives" are terms used in many of the Sts. by legal Rep is meant, the lineal Descendants of which as would ~~have~~ taken in their own right were they alive. Ex. J. dies without issue, his estate goes to his Brothers & his. they being next of kin. If a Broth dies leaving Chil. A B & C. these will take per Rep. they being the legal rep. of J. or the Chil. take "per stirpes." But when the Broth & his of J. are all dead. this Chil. take as next of kin. as "per capita."

"Of the blood." has two significations. 1st the ancient & feudal sense of it is "lineally descended from," but this is not the sense in which it is now used as is demonstrable from the Sts. It means "relative." For it requires when the Intestate dies seized of an estate which came to him by descent, devise & gift from an ancestor or kindred, he leaving no issue, the estate shall go to the Broth & his of the person from whom it came. Ex. Est. came from Geo. the ^{Uncle} of J. it then goes to Broth & his of of Uncle Geo.

The term "Children" in the Sts of N. Hamp. is used as synonymous with issue & applies equally to 1st Chil, 2^d Chil &c. only those in the 1st Degree take the whole. As A B & C. Chil of 1st Deg. take all & exclude the 2^d Chil D E & F.

Of the Half Blood.

In some of the States there is a preference given to the whole and the half blood. In some cases postponing the half blood as long as there are any descendants of the whole blood. In other cases no longer than when those descendants can take per Rep. In one State the preference consists in giving to the whole blood double what is given to the half blood. In those States where any except the last of these preferences is given, the relatives of the whole & half blood form two distinct stocks, to take in the order pointed out by the St. - But if the St should direct that the estate, on failure of issue or of Parents or the case may be, should "go to the Broth. & Sis. of the Deceased & their legal Rep." If the Broth & Sis. of Deceased were A & B of the whole blood & C & D of the half blood, they are all of one stock, & would take equally -

If the St should direct, that on the failure of issue or Parents or the case might be, the est. should "go to the Broth & Sis of the whole blood & their legal Rep. then the Rule is. That Broth. & Sis. of the whole blood are preferred to Broth & Sis of the half blood. & so are their Rep. when some of the Broth are dead & some living, for in this case, the Children of the deceased Broth are considered as being of the same degree as the surviving Broth & Sis. "being drawn up" as the Court expresses it, "to the second degree". But when the Broth & Sis. are all dead. Rep. is then destroyed. & the Chil. "stand" as the St expresses it in their own proper place which is the third degree. And the Broth & Sis. of the half blood, then take in preference to the Chil. being "next of kin."

In those States where the estate is given "to the Broth & Sis of the whole blood & their descendants. & for want of issue to the Broth. & Sis. of the half blood." It seems no other construction can be given to the words. but that as long as there are descendants of the whole blood to be found. they shall be preferred to the half blood however remotely related.

Peculiarities of the Statutes of the Different States.

New Jersey. The L^y of this State is distinguished from that of every other in the union by those provisions which give to the males a posterior double portion given to females — and there is no provision for the Father, in any event, inheriting to the estate of the son. — The whole blood is preferred to the half. No regard paid to the blood of relative from whom the estate came —

Mass. When the term "next of kin" is used, it means next of kin thro the nearest ancestors, it giving a preference to them.

Virginia. The $\frac{1}{2}$ blood take only half as much as the whole blood. In all the other states, they take equally with the whole blood, except in those states where they are not permitted to take as long as any of the whole blood of the same degree are alive.

In none of the states except Virginia, can the issue of a marriage which is null & void inherit. Judge supports the L^y to have reference only to those marriages which are within the L^ytical degrees, which mar. by the Eng. law. is null & void. i.e. if a divorce take place on that disability, the issue is bastardized. But in this state, if no divorce take place the chil. can inherit. — The words of the St. embrace much more than this, but it would be incorrect to adopt the latitude of the meaning. for if a man is guilty of Bigamy, the issue by 2^d wife can inherit.

It is peculiar to Vir. to divide an estate into moieties, when those of the same degree of kin. take, & give one moiety to the heirs of the paternal branch & the other moiety to those of the maternal line. In all the other states they take per capita.

In N Carolina An ancestral estate descends to the ^{brother & sis} person who does not only of the blood of the person from whom it came, but heirs to that ancestor; In the other states it goes, to the brother & sis of the blood simply; So if George takes from whom it came had a son Peter. he would exclude Phos & John Row. the brother of G^e.

In N.C. in case the father died, leaving neither brother & sis or issue of them, & an estate purchased by Peter's money or has come to him as real heir, to some ancestor in case of the death of an ancestor the estate goes to the Father & Mother of Peter. for their joint lives, & on the death of one of them — to the survivor for his or her life.

It is peculiar to N. C. that an estate which came to intestates by a settlement of ancestor, should in every case be limited in its descent, to a Rel. of the blood of the ancestor, from whom it came.

South Carolina it is peculiar to, that to have provided for the widows of Intestates by giving her $\frac{1}{3}$ of the estate in fee simp. in case of issue. — If there are no issue, but a Father-Mother, Brother, Sister or any of their issue living. Widow takes $\frac{1}{2}$ in fee. But if there is no Brother, Sister or issue of them no lineal ancestor, she takes $\frac{2}{3}$. And the same provision is made for this, in case of the wife's death under similar circumstances.

Peculiar to this State, to regard the Brother & Sister of $\frac{1}{2}$ blood to the Child of Brother, & of the whole blood, as that they take equally. In failure of issue Parents, Brother, Sister & their issue the estate goes to the lineal ancestor, without regard to nearness of kin. Pat. or Mat. line, or male or female.

Peculiar to N. York. That the Mother never takes anything by descent from her dead child. (altho the Father may) unless great-grandson come to Intestates by the Mother. In other States she takes with the Father as Brother & Sister.

Peculiar to Delaware, that Rep. is extended, to Brothers & Sisters grand Child. — One moiety of the estate goes to widow as dower when there is no issue.

In Pennsylvania, preference is given to the whole and the half blood, when the land has required the estate to descend to a person of the blood of the ancestor from whom it came. Penn. gives widows $\frac{1}{2}$ real estate of her hus. for life in lieu of dower. But in no other States where more than $\frac{1}{3}$ has been given it is given in fee simple.

In Conn. the Father can't inherit an estate from his son which came to him from an ancestor. The "next of kin" of the whole blood exclude the next of kin of the half blood.

In most of the States Part. child. take equal shares with the other Child, both in descent, & collateral lines, but it is peculiar to Maryl. & Vir. that Part. Child of Intestates take their shares, but no others.

In most of the States. Child born before Mar. altho their parents afterwards intermarry are holden to be illegitimate but in Maryl. & Vir. if the reputed father mar. the mother & acknowledge the child as his, the child becomes legitimate.

Incorporeal Hereditaments.

§ Co 11 That Ld. knew no ^{of} ^{the} ^{land} ^{face}

If one leased the land the land might be on the land I ~~by~~ notice to leave he was obliged to pay rent to land

When a man was dead his lands were bound to pay their debts they were not off for so long a time as would pay the debt, § Co 12 - after that by St West a number of lands might be taken during his life

In states where there is not that we go according to C.L.

In the middle states they sell the land at the best to pay the debt

When a claimant lands which B is in possession of claims B to turn out B. ^{by years of law} extra + evictions if they do not ~~put~~ in possession A that turns out every ^{man} who may be in possession

But when land is leased or to pay a debt it turns no one out, but by that means only acquires a title after that he runs an ejectment

We have but little of Incorporeal hereditaments in this country - but there is one to which we proceed.

1st Right of Way is known in this country, & may be ~~be~~ ^{be} ^{over} ^{run} either for his life or a right in fee in ^{the} ^{last} ^{case} ^{if} he sells his land which the way leads he will the right at the same time for it runs with the land,

Right of Way ^{may be acquired} by operation of law - goes upon the maxim that what the law gives it gives

2^d Right of Fishing - i. e. But he may have one in a stream where nobody else has a right to enter on

that it has reference more particularly to rivers.

Right of a stream of water. They no one has a right to turn a course of water out of the channel where it was wont to run - to the injury of another. But if it will injure no one he has a right to turn, as if every one will injure him afterwards, the right can be used for by the other owners in case of building a mill along another the water must not be turned so as to spare it coming to the other mill.

A millery can't be built upon a stream which waters rivers &c. The water may be used if he does stop the water from going down.

Rent, little to do with this country the important rule. It is the real profit & runs with the land. If it can be a sum in gross it is not rent but personal. When real it must be annual.

Annuity, is when a man binds himself to pay to another a sum yearly. it is real prop & appertains to the land. If annuity is held by a wife it can't be charged with by others.

10.1

Joint Tenancy

The Eng Law as it respects joint estates varies from the Laws of this Union. I will first give you the Eng. Law. & then point out the principles in which the Laws of the union vary from the Eng.

When an estate is holden by a single person it is said to be holden in severally. but when it is held by two or more it is call'd a joint estate

Joint Estates are of three kinds. Joint-Tenancies, Coparcenary, & Tenancy in common. And there are no others, for all joint estates fall within one or the other of these

If an estate is created by the act of the parties to two or more persons no other than a joint tenancy is created unless express words be used declaring it not so. Thus if J. S. should give an estate to P. S. B. S. & P. M. it would be a joint estate, unless express words to the contrary were used.

This joint estate is never created except by the act of the parties & newly operations of Law - as by descent. for in such case the Child take but they take as coparceners. but it is always created by purchase. (I use this word in its most extensive sense, as "every way of acquiring estate except by operations of Law")

Count. Fem. Prop^s

The Properties of a joint Estate

The properties of a joint estate are derived its unity wh. is fourfold viz. The Unity of Interest. The unity of Title, the unity of time & the unity of possession.

1. The unity of Interest

is that both tenants have same estate, as both have an estate in fee. or for life &c. but one jt tenant can't have a fee & the other an estate for life - for this destroys the unity of Int.

2. The Unity of Title

This is, the estate was created by one & the same act of the parties whether legal or illegal. Should J. sell or equal undivided half of his estate to B. they would not become joint tenants, for their estates are created by diff. acts, the one by Jt donor of J. the other long afterwards by J. himself

3. The Unity of time - These

estates must commence at one & the same time as well as by one & the same act. ex title, as a present estate made to A. & B. or rent to A. & B. after termination of a particular estate

Excpⁿ - Where a feoffment was made to a man & such wife & he and she marry. for the term of their lives, & he did afterwards marry. It was held that the Hus. & Wife had a joint est. tho' vested at diff. times. Dyce 340. 10 Rep 101, 2 Bl 141.

4. The Unity of Possession

This is. they must both own together as it is expressed per my est per joint. "by the half & by the whole. i.e. there is no severance but each owns an undivided half of the whole

Consequences of joint estates that follow from this state of things.

If ~~one~~ the two jt tenants make a lease - the rent



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Count. Ten² Consey² } being reserved to one of them it shall
emure to both, for they have both an interest - & as much
have a right to a share of the profits, & also liable for their
share of the loss. They must now be said to gether in
all action relating to the j^t est. for the nonjoiner in either
case is curse of estate. (see 8th page 38) Thus if one brings Eject-
as it first to another man, his co-tenant must join in demand
or it will estate.

But one j^t tenant can't sue the other in an act
of tres. for both have a right of entry, both having an equal
estate. Thus if A & B are j^t tenants & A cuts down trees, B can't
sue him in tres. for they are co-tenants as well as B's

But if one j^t tenant commits an act so as to injure the inher-
itance, the other may have an act of waste agt him by construction
of the West. 2

And if A keeps B out, B may have an act of
Eject (as it is called tho it is not so) agt him, not to eject
A out - but to let himself in.

The 4th Section 2. being prep'd
long before the emigrations of our ancestors is as much
O.L. to us as any other prin. & as much has long been obse-
rved, & by this the one j^t tenant has an act of waste agt his co-tenant.

The 4th Section.

gave the to j^t tenant the right of act of account agt ~~the~~ the his
fellow, this is a very proper law, as it obliges the tenant in poss-
ession to account to the other, who may perhaps not choose
to go into possession - for his share of the profits - But this
it was pass'd long after the emigrations, of course it not
of our O.L.



Joint Ten. Incident?

2^d The second consequence or Incident.

is that of Survivorship. Thus if A & B own an est as jt ten upon the death of one the whole est. reverts over to the survivor, & no part descends to the heirs of the deceased, - this is call'd the jus accrescendi. because it accumulates or increases to the survivor 2 Bl. 184.

This jus acc. may be destroyed by destroying the jointure, as by one of the cotenants aliening his share; but nothing else can be done, for it can't be devised away, as the devise takes effect ^{not} after the death of tenant & the jus accresc. according to Bl. reason. But I take the true reason to be that these jt estates are not devisable by the St of Wills 27 Hen 8. & this is substantiated by the fact that her. prop. always was devisable. & if A & B had own'd a house together as jt ten. & one of them died his share of it.

Severance of Joint Estates. A joint tenancy may be severed several ways.

1st By the mutual agreement of the parties, as by making a Partition. And before the St. of J & P. this was done without Deed. the method was practical, by the parties going on the ground, making a partition & setting up a stake, & so were considered as unnecessary as they already had the title. But since the St J & P. the partition being made, they mutually quit claim the other part.

I am much inclined to think that even now since the St of J & P. the old method of a practical division, wd be good, & there some important reasons to support this, which I will give you by & by - So before this

Joint Tenancy, Survivorship } this it seems were necessary to carry an estate
2^d By of C.L.

and it tent ed not compell his fellow to make partitions
but by a very ancient it of H. 8. this power was granted. &
then the est was held in severalty - & the jus accrep. was destroyed

The mode of accomplishing it is this. The free
of late years has been to go to C. L. more frequently than to law.
And it may be done at either. The party applying must
state that he made applications to his fellow tent to make
partitions & that he did not. And then states his ~~own~~ ante-
gonists title (if this is very important); & his own, & these
must be established. If then the verdict is in his favor
i.e. that partition be made. The Law is that the Sheriff
take twelve men & goes out & makes the part. & this is
returned to C. L. And if it be there determined to be just
it holds forever.

3^d. By one of it tent's selling his est. the
jointure is destroyed - for then the purchaser & the other
it tent hold by diff. titles, & the unity of time is also destroyed
any act wh. destroys the jointure also destroys the jus
accrescendi.

But there are two ^{Exceptions} sets of cases where this jus
acc. more prevails. 1st When of two Merchants in partner-
ship one of them dies, the est. does not survive to the sur-
vivor, although words of joint tenancy may have been used
in creating the est. The 2^d Is when there is stock in joint
ownership upon a farm. in case of the death of one of the
owners the jus accrep. does not prevail. 1 Eq. Ca. Ab. 290, 1 Vern 217.

After the jointure is
destroyed & they do not hold in severance. the hold as ten-
ants in common. The above is of Eng. Law. -



Joint Ten^r

The American Law

What has been said above relates to Eng^l Law but certain things have taken place in the Unions which will prevent its being (in toto) our Law.

In most of the States of Eng^l Unions, power is given to devise all the estate which a man has in possession or has a title to (by some) & the remainder here by it destroyed the jus accensendi; so that the right of survivorship is not known amongst us, & constitutes an important distinction between our Law & the Eng^l.

But still where there is no it destroying the jus accensendi power of devising is given, if he does not devise the estate survives to the co-ten^t.

New York has declared the words which creates a joint tenancy, shall convey a tenancy in common — so that ~~they~~ she has reversed the Eng^l rule.

And in many of the States, joint ten^r are treated as ten^t in com^{on}. tho they have not it to that effect — this is the case in Cal^{if}. & has been established by a long course of decisions.

At the time of the Revolution, it is a little worthy of remark, that there was not a State which had not resisted the authority of all the Eng^l. to which were pos^sed of immigration of our ancestors. But most of the Sts have made a thing to rest it that the right of ac^t of ac^t a g^t his fellow.

In case of the death of one of two or more joint ten^r, the right of surviving survives to the survivors & the Ex^r of dec^d has nothing to with it — for by the death the partnership is dissolved, & the survivors are & are und^{er} without the Ex^r being join^d but after the money held & estate settled the survivors are bound to act with Ex^r — But the Ex^r

Joint Tenants. } may do all his but might have done & left
me & he said.

For authority see 2 Bl. 1st Joint Tenancy & Co Lit-155. to.
In some of these Wills one j^t tenant may sue alone but if he recovers it
enures to the whole.

Coparcenary

Coparcenary is always created by operation of Law
As, by Descent. And always in Eng when the est descends
to females they hold in coparc^{ry}. but if to males the eldest
takes the whole. In cases of Gavelkind where the
est descends to all the sons they hold in coparc^{ry}. & This
is always the case in this country when there is more
than one who inherits the est. descending.

The Interest of
a Coparc^{ry} is so far like that of a j^t tenant. that ~~the~~ it is the same
for if one has a fee they all have a fee.

But it is not accreping
the est. wh^{ch} commences at the same time. For if A, B, & C
hold an est as coparceners. & A sh^d die leaving child. then
children wd take what their father wd have taken, but their
title accrues after the title of the others —

Coparceners can main-
tain no ac^t of Writs ag^t each other. the reason is - that they
can any time they please attain a partition. & there
is no j^{us accrependi}. - Which are qualities not belong-
ing to j^t tenants.

The entry of one coparc^{ry} is the entry of all & no ac^t of this.
& maintainable by one ag^t another. But they have by the Statute a right to
ac^t of account. But there is no j^{us accrependi}.

11/11/1881

(2) In point of unity of title, interest & time but not of "proprietors"

Remarks in Common.

Tenancy in Common has none of the unities ^{of the other est.} it except that of possession. so that one man may own a fee while another owns an est. for life - one tithingly deed the other by Descent. It may have been a ft est given to A B A B had sold his right to C ~~he~~ hold with C in common - A so numerous either of the before mentioned estates is destroyed it terminates ^(b.)

But it may be created by words & if the
we made we had created a new est. of the words "We
the way in com-^{it} ad ad ^{it} it become a theory in
time

Lusk is com^d as competable to make partition
 of the Her es - but there is no jrs accorde
 Co Lit 1936. ad me

~~Text~~ ⁱⁿ ~~cur-~~ may see without his coat - And other
aspects it is like the other of the est. - As in the etc.

But in
none of these states they have permitted one of them to
sue alone. As it is done in Con. let it be recovered
he recovers for both. It is a hope that he recovers
it enables to all the other of them.

Peonies to be grown

up amongst us from the inconvenience of compelling
all to join. ^{that one} ^{co-partener} may see alone, in the name of the abler
This was not the case when the Judge
first went into the pack. But soon after his return
since a net was lost by some of the Sparrows having
left out 1 out of 3. This one not being known a
net lost & one died - & 2^d one of the girls got married
He altered the 3^d net - then they lost the 4th by one of the

The words, "equally to be divided" when in a ~~deed~~^{will} convey a tenancy in common, but if in a ~~will~~ deed convey a joint estate. See 291. volume

(d)

Tho if pl one in possession kept the other out, or would not let him in when he demanded it. - but claims to hold by another by an adverse title, a great length of time will destroy the ousted ones title, for the presumption is after this length of time has elapsed that there has been a settlement & is in fact between them. But no length of time prescribed by the Act of Limitations will ever affect this

Ten⁵ in Corn^m } lies alone - & the Lt delv & good & A
the rule has prevailed ever since

There have been contra Decis.

cases in Ch^y & in the case where lands were given to A & B
to be equally divided between them. The Ct of Law Decided
it was a joint ten. Ch Decided that it was tenancy in
Corn^m - but there is no doubt but it shd be the same
in the Joint Ch with any other event on the ground of giv-
ing the interest of the donor full scope. Salk 391. 1 Eq. ab. 291.
1000p.

All that is necessary
by the act of gift being lost, is, not to throw the one side is in hopes
of prop^m but only that the off. may be admitted into possession.

There is no Act of Limitation which runs against the
tenant who does not go into prop^m for the prop^m of an
is the prop^m of both

(d) See the oppo. pa. (d) But suppose that one of the tenants
common shd get prop^m in turn the other out - or
shd call upon the one is to give him part of the profits
but if he wd not the party might hold the prop.
so long that the one out never wd get prop^m on the
ground that it settled at some time or other -
It is supposed that the one out of prop^m did not call
upon the one in for admitt^{ance} till after a long time &
in this case the land never can be recovered, see the
doctrine in the 1st & 2^d JR. 758. You goes into prop^m. A turns
out the one in prop^m & he makes no claim. The presump-
tion is that there was a settlement. The other is no
receipts of an actual estate for the Ct will suppose
it after a certain length of time 2 Bl 142. see the one

In the case
of Partis if you are concerned if a case where the one

✓ Trust of in the case partly lies in these cases.

Ten's Com^o { a complete destruction of the estate - is
easily supposable of personal prop. or as if this. will
be ^{in the} case when one of the ten's com^o down a Mill.
The act of this. will be - the reason applies to all
the three before mentioned estates.

Real Actions

There are several act^s which relate to real prop -
they are the tres. ^{to} the case, tres. in et cum - rights
Equipment & Depletion.

The prop. act^s however are
less & less. Waste is seldom not that it may
be lost, & it is very recept^o to understand it.

This is the case will be least by comparison
with tres. in et cum as I go along

Thus in the case is - the matter
face that tres. in et cum is always attended with
force either implied or actual.

And it is always
disturbance the possession of some person - but it is not at
ways the case that a man's prop^o is disturbed by force
as when a man has a spout in the house, which
throws water on his neighbour's house, here now no
force it is in it, for he had a right to put the spout
on his own house & there was no injury till after
the spout was up so that it was digging a ditch on his own
land by which he threw the water from the neigh
bour's land & there was no injury in making the

Real Actions { that the water was turned. But there
is a nice distinction which I think is unnecessary
and they are as much ^{liable} as if it were as
this in the case especially so in the spot case
for the encroachment or "his terra firma being taken from him"
Itha 635

The reason
of the distinction was that they had to pay a fine of 10
in the case of arms ^{it being an ancient right} but when the law or the case was
introduced they endeavored to escape the fine
the judge in the 1st case was capricious & partial but in the
other "let him be in misericordia"

If the injury is not
called a consequential injury or a lawful act as
the digging a ditch &c. no tort or wrong can be held
but if the digging was in his neighbor's land this
will be tort. Itha 635. 2 Ray 1402. 272.

As a man
may be liable in a case where he is not doing
what he ought to do - as having found himself his
duty, ⁸² he assigns to keep a certain distance from. & he
neglects to do. The tortious act does not
lie - but this in the case does lie for his neglect
proves a nuisance 2 Ray 158. Fitch 1103 23. in consequence
of the neglect. 503a 100.

As a man
has been a guest in his neighbor's house & commits a tort in it
for which damage is done & he is liable in consequence
of what he has got in - it is so that the act must
be both the cause for breaking the peace & the other in the
case for the consequential damages - the other side
say it must be but one act, not in the consequence
but that if it is against the damages are given in

Real estate { as mat. of aggravated This is the comⁿ mode,

4 Ba 160. And it is now settled that in the vi et armis
you may recover by way of aggravation the damages sustained.
Stra 655. 2 May 27th.

There is a Rule to be observed yet
when a man gives a license to another ^{to do a thing} & he takes the
license - the act is on the case - but if the Law gives
the case license & it is alleged he is convicted of a
tresⁿ at night - i.e. of going into a house - & after
entering so he breaches the permission he may be pro-
secuted in an act vi et armis - another case the
thief & a criminal case where I take of a house
as he had a right, but then stuff several women
he is a trespasser as much as if it had been done
by a private person 8 Co 148. see all the Law
4 Ba 161. the narrow case

When the ^{prin.} ~~prin.~~ of l^d to maintain

the act of vi et armis there must be a possession in
fact or something equivalent ^{to it}. Now suppose I find
I have land he never was in possession but had the title
^{by descent} he never ^{by descent} maintained the title and it descended
from him, tho if the land had been rented & the rent
had been paid it wd be equivalent to the possession. but
in ~~the case~~ ^{the case} ~~Notes~~ a man may bring a trespass if taken
not then is actual possession the cause of the differ-
ence is that we do not consid^r the actual ruin of a
much consequence as they do in Eng. but the legal
ruin is suff^t. & the land is devisable & the
the is done the real prop is put on the footing of
her prop - & this is the prin^o on which the ac-
tion lies in the country - 2 Lev 209. Latib 263

2112.
Reab. Actions { If there a pop^r in the C. L. is nec-
essary any pop^r enough I do they will not part with
that a mere instance our buy the bus - but it is -
enough that a Disperser may bring the bus. for he is
is Pop^r in & this pr. of C. L. is very ruined from
the E. R. turns I & out of a lot where Prungs is lost
Probes says it is his - now I. may bring an acⁿ for
of Disperser, but some one while Probes is in Pop^r
gas & commits a bus on the C. L. Probes keeps
the acⁿ & not I. for I will by & by make a
allied to act to States for the meagre profits &
which will be the end this soon as I I keep the E. R.
I recover. & Probes is carried as a trespasser the whole
time he was in.

I may must question whether the acⁿ
for the meagre profits as in. bus will be - &
It is a bus of bus that if you buy a acⁿ & it is that
acⁿ you can recover all damages. they shall be reco-
vered - but by our way of bring^g a suit of E. R. we
if we please recover all the damages; & had in of
course of the whole is not recovered - it must be proved
on the records that; But we do bring the acⁿ of E. R.
& then a 2^d for the meagre profits & the the damages but
it is certain (2 Not 553) to the pr. that you shall
not sit a man with a multitude of suits this is the
Eng. pr. as well as our own. The Disperser

action out of possession has a right to recover all the
damages if Dep^r ^{but you a bus. is committed} ~~the~~ the whole damages are not
recovered of the trespasser nor when the Dep^r ^{by Dep^r} ~~is~~
Dep^r ^{you} shall be compelled to look to the
Dep^r for the recovery of the damages, or pursue the process of bus.

(c) The principle here is, that if the injury likely to be suffered wd. be irreparable then wd. be no trespass. Secus if it wd not be irreparable.

Real Actions { the highway is up as he sees the land.
but if the highway is taken up by authority it is then
liable to be sold by the public for the making any other
highway - so it is not his prop. any longer the
it runs by his land.

All that I mean by the propriety
recept (2 Rol 509.) is that the prop is recept to be taken
led at the time of committing the trespass

Of What is, & what is not, a trespass there
is a great deal of nonsense in the old books whilst
it is doubtful whether it is or not good law now.

- (C) see it in (5 Ba 178. 2 Rol 507.) Amongst these cases, it was
held that if a man went into another's land to rescue
his ~~prop~~ cattle from a vagabond - the Ct solemnly
declared that in that case he was not liable but if
they had been milking his cattle it would have been a trespass.
in est animi - But if he had pushed over the fence to avoid pursuit
it would have been a trespass. But if to perform some act of charity, beneficence
or the like. - But is crisis of public utility, (as it is
to prevent an epidemic of smallpox &c) as the bringing
a vessel up the river they have a right to walk on
the bank & it is not trespass (2 Ray 950) So if throwing up
a battery &c in time of war 2 Ray 725. 5 Ba 180.

So as to noxious animals it is no trespass if you are in pursuit, but
you can't go into the land ^{of another} to find them. The reason
is that by the finding of them you have acquired
a right & so may pursue them. But it would be trespass if you
should pass thro a field of grain or should dig the animal out of the
ground, without licence Cro J 211. 5 Ba 460. 11 Mod 75.

(6) So when one sells this to another he grants the right
of way to get to them, or he can't have the benefit of his contract

(7) But if he should turn them into the high way & they should be lost he
would be liable for them.

3 Real Ac^{ty} Tresp^{ch} { There is always an implied agreement when
a man parts with his land - ^{the another & to his crops &c} that if there is no other way
he gives a license for a right of way & this is to be done
with the least injury to one & ~~can~~ is convenient to
the other, so that it must be governed by reasonable prin-
(h) ciples - so if there is a passage round which is 4 miles &
the passage thro' the land is but 1/2 mile - he may go
across for it is not supportable that he should pay for his
inconvenience; & 5 Ba 180.

When by the law of an executor, ^{in the middle of another's} it is otherwise
for there is no agreement out of which this implied agree-
ment arises & Rot 567.

I am not now explaining the law
of right of way except as it regards real prop.

If a man should

drive cattle out of his land onto his neighbors land
he would be a trespasser if he drove them with a view of
driving them there but if in setting his dog on them
they run there it is no trespass. But in the case the
owner of the land must set his dog on them & drive them
when they please to go. & if they go into the highway
(h) it is well. & if he don't do this he may implead
them. but when he impleads them he can't
bring the action for damage - for he has elected his
remedy. & this is governed by the same law as the
taking of a mans body. & when the owner of the
cattle takes the cattle out of pound & he can't agree with
the compounder as to the damages then the writ of replevin
is issued ^{by the owner} & then used for the damages, ^{& if they were wrongfully impounded he} but the Defendant
^{recovers} if they were impounded rightfully recovers his damages

Wells v. Wells { This is a suit in rem. & this is
one of those cases where the remedy can be sought but in
one way, i.e. when he has made his election. If
he fails in the remedy elected as if the cattle strayed
out of pound, then he can take another course
but here of judgment has been paid (12 Mod 662) he can
take a second remedy 1 Lalk 246. L Ray 720. 5 Ba 179.

There is a
notion case when a man may go upon another's land
in the case he had a stream of water running thro'
his neighbor's land - as by an artificial acqueduct
he need not be a trespasser if he went on to the land
to mend the acqueduct (2 Rol 567.) even if he had
to dig to do it - 5 Ba 180.

When a man is in pursuit
suit of noxious animals, if he has acquired a right
by finding & pursuit he may follow them into
his neighbor's land - but he must do no injury
but what ^{he} is obliged to do by the pursuit - so if he
should trap the field of grain (Cro J 211) or should
dig out the fox without a licence he need be a tres-
passer 11 Mod 75. Bulst 2. Cro J 221 5 Ba 175. 180.

As a man has no right to
make use of a certain kind of dog to chase land.
cattle it would be a trespass if they were driven into
another's land ^{by means of dog} but if it was a proper dog - it
is no trespass if they pass into the neighbor's land - or
unprofitable. Dog is a mastiff in case of his being set
up sheep. a large dog set on mice, who was
in custom of eating mice, the act of this was good. but a
little dog may be set on cattle 5 Ba 174 4 Co 28. Cro J 254.

(a) Strictly speaking no man has a right to enter a house
without a license if he does it is a trespass.

11100105

Real Act^{ing} Tres. { (a) Trespass of entering a man's house
is much modified of late - when formerly a woman
went in to see her sick child & her father & mother
had ceased to be Law. If he had entered with the
view of doing a act of beneficence charity & it was
he ~~was~~ ~~the~~ ~~but~~ ~~the~~ ~~danger~~ and he let himself in - let of
with a misnomer intent the damages high

But then
we care under the head which are important
they are of an officer's entering a house ^{by breaking the out door} - there are
in civil process cases when he has no right to
break an outer door for the house is the man's
castle but he may break the inner doors -
^{when once in the house}
the in civil cases he has a right to break the
outside door - this is in on the ground of
the comfort of the family - so if he gets onto the
house so as to explain his object - he may break
the second door - another reason is the improper
persons might enter under the improper plea of
a family that it was an officer - & it is on
of principle that any other house within the curtilage
being taken possession of he having shut himself &
his goods up there it is no protection - but
in a case where the house was so near to the
duelling house as to disturb the family in the
breaking ^{of it} when the second It has been decided in the
State of a Mass. if the officer went & told the family of his object
it was no Tres.

Solomon that in civil process the officer may enter
the duelling house ^{by breaking the door} - the reason is that there are
one of much more importance than civil cases

(c) This point was argued - & from so much sheep being laid upon
it the judge would infer, that the boy and he had. otherwise the Ct
would have assumed so.

Heat St. Pres. { of another a Sunday & keeps him until
Monday when he arrests him - now this would
not be permitted 1st Feb 1866. Bro J 556. Palm 54. He took
the man & he incubed - in the back car, but according to the ^{officer} Mr. L
in Cole the arrested is good. Pullins, Iowa June

is like the American is good. Pulling down James
to prevent the spread of fire is determined to be legal & B.
186.

Whetoe is an actual nuisance to the highway - the removal of it by any man is no tres. altho' the land even to the middle of the highway is one's own - but nothing which is or is not a nuisance. (2 Rot 552 - Dy 285) can't be removed.

The answer with
respect to the ^{thoughts & activities of} ~~the~~ ^{A & B} shall be sent together so
that you shall be able to get up Land - That A. depends
B. - A C depends on A & B while C is in possession -
now we are told that B can maintain on it -
In the act of dispossession. but now if dispossessed B.
can proceed on the ground of A's tenancy in possession
all the time; & A's possession is by the fiction clothed
act of existence - now he has had a possession &
is considered as the possessor of B. on the prevention
fiction or Pol 554 Geo E 540.

Now suppose A. Dicks
B. Sears to C. can B. when he gets prop^a or in the
 the case move the rents of C. together with the
 profits? The discussion is contrary - the position
 is reversed to the point that B. has been in possession.
 Now this ground alone C. and his tenants were there
 no other principle ^{to interfere but there is one} which is one of equity as well
 as policy ^{regarding the encouragement of agriculture} for C. did not dip his A. as is the first

the first of the month of January 1864
I received from you a letter of the 27th inst.
in which you informed me that you had
received from the Secretary of the
Board of Education a copy of the
report of the Committee on the
Education of the Colored People of
the District of Columbia. I have
just received the report and have
read it with much interest. It is
a very valuable document and
contains much information of
great importance. I have
been very much interested in
the progress of the education of
the colored people of the District
and I am glad to see that the
Board of Education is so
thoroughly conversant with the
subject. I am sure that the
report will be of great service
to the Board and to the
people of the District.

Real Estate { but he came in lawfully - I did right
in taking the lease from the apparent owner -
I consider the true Decisions to be those which
pay B can't recover ^{for if B, was liable to A in this case, it wd be dangerous to leave land!}
but in cases I would of the
rent not being paid I am not being able to recover
aff. & dep^{ts} B wd be entitled
to the current - but if A ^{had made a cont. &} carries over or y^t lost
of C. then A be ought to pay it to B. - but
this a doubtful subject - as the authorities were

But even when land is let & it turns out the
less^r had not title. the less^r need not pay it to his
less^r or the rent remains & it is undoubtedly the law
but when there is a Cont^{ty} for a sum in gross - the
and rent is paid & rent not paid the owner can't
recover, but the less^r is obliged to pay it to the less^r
for it being due in a bond. & the consideration
of the bond can't be gone into. but in the other
case B may recover 2 Rol 554. Cro E 540. Mod 461
Contra D.M.P 87. 11 Co 51. 1 Bur 81.

Another use
which we may have occasion for ^{it is} in (Jenk^{ts} centu-
res 51)

The less^r can maintain an actⁿ of Tres^{pass} ^{as to the} while his
land is leased - but if he made a reservation
of certain trees & those trees may or not be any
harm to the less^r. - for he has a fee simple in the trees
and it is a fee in a fee - for there is a water
on land & so the trees as it comes may be lost
I Ray 739.

An actⁿ of Tres^{pass} against the tenant of a White if
he does any act not consistent with his estate - for
his estate is determined by the act but act inconsistent
with his est 5 Co 12, 60 L^{it} 57, Cas E 784

(2) under such circumstances, for the presumption is, that if the tre.
was committed, it was forgiven - & the act is now but merely
a retaliation, for some offence lately received.

The Act of 1792 ^{if two persons} is not imposed - as is case if the land
 being together & then divide the time alone being one
 of them it was found to be wrong - the Act if
 this is broken the Act of the penalty ^{to be} recovered - but he
 recovers only the value of the trees - & does not
 recover the little damage penalty & value of the
 trees - And it is not settled that a recovery may
 be had on the Act under the Act for the simple damages
 only for the St. embraces it; or he could recover the
 at C.L. and this is a point which will hold good
 in all cases, although the Dec. is under the St.

I then of a case where a man was indicted for sell-
 ing land out when he was out of hope & another was in - an
 act - was broken the St. for recovery of damages & the penalty
 after the St. had run. & it was decided that as on the account
 he did not recover the penalties, he could in the Act under the
 St. recover what he might have recovered at C.L.

The St. Lem.

observed to be 3 ft. high the St. who takes away the right of
 action ^{or 15 ft. or 20 ft.} when he is deprived he can enter after the lapse of
 20 years - and in some of the States ^{the term of hope} it is considered as giving
 a complete title to the holder but at C.L. no complete
 title is given under 20 years - but taking away the right
of entry gives a title in these States.

On those notes when they best real prop.
 & personal ^{as} it regards prop. ownership is enough
 to entitle one to sue in this - but at C.L. and
 the reason of its giving this right ^{act} is, if where a man has
 a right of prop. he has a title & it is the same with own-
 ership - for take away my right of prop. to a house & you

Handwritten text in Arabic script, consisting of approximately 15 lines. The script is cursive and somewhat faded. The text appears to be a letter or a document, possibly related to a religious or administrative matter. The lines are written in a consistent style, with some variations in ink density.

Handwritten text in Arabic script, continuing from the top section. This section also consists of approximately 15 lines. The script is similar to the top section, but there are some visible ink smudges and variations in the flow of the writing. The text is dense and fills most of the page area.

Excerpt. { Depressive of the hose & is the nerve in the per &
real pop. is on the same ground at CL House

Proc. Business Kind of Boys 1833

It take away this right of entry it must be in adverse
one certainly - and it must be something wh shows the
def^t claims that land is his - Now suppose I M build
a fence around a piece of J's land. A J does nothing for
20 y^r. I take yet a 20 y^r - which answers the rule - it
shows he claims the land as his - and if he only went
back & moved for 20 y^r off from the land of another, it is
the same tho' not so strong a case as the other -

Sept. I. N. buys 60 acres of J. S. There is no fence around
20 acres of it. He goes then & gets his wood for 20¢ - the
it is claimed by another - A Doctor did in fact belong
to Stiles, the paper is good. For he did cut the wood during
it as his own but any act of intrusion is his and
not ^{his} ~~his~~ when away the right of entry from the original and
true owner.

The prop^y of A serua notitia
 when young or always owned is belong to the person
 who ~~across~~ ^{owns} the land, - ^{as we they never lose} ~~the~~ ^{it is of} ~~the~~ ^{little} consequence ~~it~~ in
 the country except in the case of bees - I here it is not
 entered that the discoverer is entitled in some parts
 of the country ^{to the whole of the honey} in other to but a proportion
 Less or L L - This is by the customs of the diff^t parts
 of the country only that it is regulated.

Tomb is comⁿ must me partly at times
but in quietm^t they are liberately at my pleasure & in
his. The night^s must be taken advantage of by Plea in what I have ^{are} left them.
Suppose it should me in his age C - he would bleed
is clear + the joint - then's ^{or night} B. If he does not bleed

7403
The Act¹²² Tresp⁴ { it be raised it - but why should
not A. recover for B. did an injury to B. - & an
injury is done to B. by the recovery - 1882.
(Civ. 2142) now seems that the non-jurisdiction may be
found in what (554) Cal 4 is cases of the 1st is com-
mon - then does not seem to be any more
reason for going the whole of the ~~afforded~~ ^{in place}
than all the Tresp¹²² is an act of B. - which is
undone done - for none of the Deft ~~are~~ ^{are} injured
by any one of the tortious persons & that the rest
of them need have no reason to call on the rest
for to pay their part - but in cases of Court
the one ^{all} must have a right to a part of contribution
against the others - for they all owe the debt & not
one of them & the Court ^{is} ~~is~~ ^{being} joint - but both are
both joint & several;

You had the Rule of unimpaired
is found ^{as B.C.} ~~as B.C.~~ ^{as B.C.} my say. A verdict is that C.
is guilty & ^{as B.C.} ~~as B.C.~~ ^{as B.C.} \$1000. But B. says I got \$1000. now
the Off may not abide the verdict for he may have
it on a verdict, but then was no reason in
the prior that it should be the case that the case
the prior in which decisions have been predi-
cated ^{for he has a right to recover the whole damage if anyone of the 3rd}
for A & B may be bankrupts & so he will
lose the shares affected a then A so by the verdict
he is entitled to \$500 - but if the verdict becomes
on a verdict of bankruptcy of A & B he recovers only
\$300 - & that is the reason - but the Deft has no ground
of complaint therefore he can't set it aside -

There is an inaccuracy in the books as to the

My dear Mr. [Name] I have the honor to acknowledge the receipt of your letter of the 10th inst. in relation to the [subject] and in reply to inform you that the same has been forwarded to the proper authorities for their consideration.

I am, Sir, very respectfully,
Your obedient servant,
[Signature]

P.S. - I have the honor to inform you that the [subject] has been referred to the [committee] for their consideration and report.

I am, Sir, very respectfully,
Your obedient servant,
[Signature]

I have the honor to inform you that the [subject] has been referred to the [committee] for their consideration and report.

I am, Sir, very respectfully,
Your obedient servant,
[Signature]

I have the honor to inform you that the [subject] has been referred to the [committee] for their consideration and report.

I am, Sir, very respectfully,
Your obedient servant,
[Signature]

I have the honor to inform you that the [subject] has been referred to the [committee] for their consideration and report.

I am, Sir, very respectfully,
Your obedient servant,
[Signature]

Real Act - Pres {justification of this. suppose one is sued for
not pulling off his hat ^{his misdeed} & he pleads not guilty. & what does he mean?
"not guilty" means in com^{on} use "not guilty of the
crimes alleged" - but is not he not guilty of any
wrong by doing what is alleged. & he has died
to get honor & head's matter of justification

Action of Waste

I shall then point out what waste is.
I shall first point out under what circumstances an act of Waste may be brought.

It is an act given to owner of the inheritance
he has parted with, ^{it} either by contract or by operation
of law. It is not for injuries done to the inheritance
since which ^{time} he had no right to do.

It is of two kinds
voluntary & Permissive - voluntary is when the
tenant has done a wrong not himself, the other
is when he has permitted another man to do it.
This is the Lease but this it is, voluntary waste
but if I now had done it the act is of the
law he might have permitted it by an act of law
which the Lease could not & this is permissive waste.

And so the Lease is act
countable to the Landlord for all injuries & the
act is given to the man because he ^{has} lost the lease
whereas the ^{act of} law was for the lease - formerly the law
from ^{the} ^{act of} ^{the} ^{law} ^{was} ^{for} ^{the} ^{lease} - formerly the law
was in favor of those who went only
operation of law - the G. L. for the contract where
it might be so made as to render the Leaseholder

1845

Action of Waste { but how who runs in by entering
a power to, ~~land~~ ^{land} ~~not~~ could not be made

But the old the lease ~~was~~ gives it to all
tenants (5 Com Dig 674-2. Co Lit 34a. 5 Co 13. 1st Glouc 155)
6 ED I. 5. gives ^{agst} the lease for life or for years.
2 Rol 826. as well as agst the life for life or for years (2 Inst 299)
By the the the party is entitled to recover Article Dam
agst the prop. warden. in the forfeiture of the
lease, 2 Inst 146, 299. 145. 2 Land 244. 5 Co 12 b.

This act goes against the person who is entitled
to the lease. & the right of an^r goes with him
who is entitled to the land is - (Co Lit 34.) & so he
he (Co 2 682) who holds by a title even from the
tenant is liable, & not the orig^l les^{ee} when he has conveyed his lease
to another.

So when the lease goes into the hands of any
other person not by a conveyance but by a lease
or the like ~~and~~ the who has the lease is liable
to the waste Com Dig 675, 2 Mod 90.

Remark it is

The lease who makes the man liable & it is not the
Contract. So if Jd conveys to Jm & notes conveys
to Jm & no waste is committed till Jd notes
repossess J. who is not liable (2 Rol 829) ~~but~~
but Jd is liable.

Lesson the les^{ee} to les^{ee} the les^{ee}
has no ac^t ^{agst the lessor} the the land is ~~the~~ out. but the les^{ee}
has the right of an^r

When waste is committed by a
Jd ^{of a lease} the ac^t is not agst both but the penal-
ty goes only agst the wastor. - 5 Com Dig. 676

[The text on this page is extremely faint and illegible. It appears to be a handwritten letter or document, possibly in cursive, but the characters are too light to transcribe accurately. The layout suggests several paragraphs of text.]

Re: Waste { Thus once a year let us say I own the
man - that if a girl sh^d commit waste of the man
my ^{wholly} the hus, is liable (a Rot & 27.) but is liable
all other ways he takes her for better & for worse!!
5 Nov 670 And the

ai must be lost agt the but in his life time
if this is not done - the Ex^r is not liable - but if
any injury is done after his death the Ex^r is lia-
ble. It goes on the maxim, that, personal ai-
for torts die with the persons. it means the deed
done does an injury, but does the other regard
as in the case of John beating J. L. - injury to J. L. but
no good to J. M. (Ray 57. Note as Blandford.)

Suppose John goes & kills J. L. John is J. L. - no
ai ^{after J. L. death} but if he had taken the horse, the ai-
after his death - the the ai- if lost wd not be
it might be lost for money had & received.

As John committed waste & the reversion 20 yrs
it then is now dead. we are told and ai-
his but if he had taken away the trees & sold
them it would come under the above rule of
the horse & the ai- ad lie. 5 Ray 71.

I think then the Rule
must be amended thus. Not if the waste got
benefit by the waste the ai- would lie - the
not an ai- if lost or if waste ^{but it must be} by stopping
the profⁿ between & used for his benefit. in case
Hambley & Frost p 71 &c.

Another rule mistakes ground & my
opinion is where a man married a woman who
had committed waste ^{as at Blandford she held} & if she dies - no ai-

The first part of the paper is devoted to a general
discussion of the subject, and to a statement of the
object of the investigation. The second part contains
a description of the apparatus used, and of the
method of observation. The third part is devoted to
the results of the experiments, and to a discussion of
the causes of the observed phenomena. The fourth
part contains a summary of the results, and a
conclusion. The fifth part is devoted to a
discussion of the results, and to a conclusion.

Piddo's Wife { meant his as acct of her death
- But by the marriage she has got an interest
in the life of his wife 5 Com. 876 Co 8 258

And the rest of case

It is now a com- thing for her to be taken
without impairment of estate 13 Com 676
Moore 227.

It has laid a ground

for the Ch to assume a jurisdiction over estates
for a while, strange that the man shall be liable
for no estate or the turning down a house, ^{the}
Ch of Law gives no damages but Ch. does give
the remedy for they did not understand that
the license extends so far - Can the tenant cut
down a beautiful avenue of trees -

The Mort is

commonly left in pos - & the Mort is has
no ac- of estate for he may turn him out
whenever he please wh is not the case with
the leased estate

But the ^{com} Mort - if the Mort -

is in pos - being an ac- of estate of him for
he ^{may} get his debt out of the ^{if the estate is mortgaged} ~~estate~~ the
Ch of Law will not remedy - but Ch will
on the circumstances grant an injunction
in either of these cases - and the mort must
be ~~compensated~~ accounted for an the redemption
but at Ch of the estate was not ^{not} ~~not~~ 40th
ac- and not in Co Lit 54

That will not be

for a injury committed by the ac- of God as
lighting Co Lit 53. 10 Co 149

My dear friend,
I have just received your letter of the 10th inst. and am
glad to hear from you. I am well and hope these few lines
will find you the same.

I have been thinking much lately of the future and
how it will be. I am sure it will be a bright one for
all of us.

I have been thinking much lately of the future and
how it will be. I am sure it will be a bright one for
all of us. I have been thinking much lately of the future
and how it will be. I am sure it will be a bright one for
all of us.

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I have been thinking much lately of the future and
how it will be. I am sure it will be a bright one for
all of us.

(a)

See Distinctions & exceptions to this in 1st 497. 2d 13.

(Great Act) Waste & repair & if he neglects that it
is waste - He does not contravene the waste
of age but if he neglects some necessity
& repairs is the shirking it, - when necessity has
consequence of when the timbers are rotted - the
at-lies - Then when we are told that that pulled
down the house - is waste it is surely now
destroyed - & by the law it is also waste if he
builds down the house & builds a better one
He is more difficult ^{to understand} - ^{know} more is the early
time when some or few others could need
assist the priests. - & consequences were made
without deed & only in the presence of witnesses
in consequence of this they wd suffer no change
to be made in the prop^{ty}? If of them that to a change
the witnesses wd not be sure it - was the same
piece of prop^{ty}? for then was ^{in this case} an old house at
noon it is a new one - But now when
prop^{ty} is conveyed by deeds - these reasons do not
hold (2 Rot 415 to Lit 53, Rot 234) & there is no
case of the kind - the old law new looks.

As for the
rent had a mill on his estate & he pulled it down
& put up a new fulling mill which was more
valuable & had to be better for the owner when he
^{the} came into possession - 2 Rot 415 - 2 Lev 209, 1 Mod
94 but it changed the face of the property & was therefore
waste. 2 Bro 192.

Re-~~lect~~^{on the face of prop} Waste. { In other respects - there must be an alter-
5 ^{in the face of prop} consequence of the forgetfulness of trustees - So of
dishes or houses as supposed to decay it is waste & not
815. Moore 89

The trust of a house either for life or 99, finally
by & lease, ^{obtaining for} he himself the right) has no right to have the
land to dig a mine - But if there be mines open
he may dig them, but ^{must} not open new ones while
53. Moore 101, & Rol 816.

Exchange the land from one
to another is remarked yesterday it is waste but if he
has sometimes used as one of sometimes the other it
is no waste to change it - from the one to the other
a Rol 815

A case in 2d. where a man turned the land
into a hop garden & it was waste altho by this rendered
much more valuable - In the country there
is no hazard in thus changing the face of the soil.
And I doubt whether the old law wd be law now
5 Co 12 in Eng.

Bad management of Husbandry is
not waste a Rol 817.

What is Waste as ^{agreed} it timber, We must
understand that the trust unless by express contr-
is no right to the wood or the land except for the con-
spires of the farm & for his use as fuel, as the fire who
cut into & also have a right to cut the timber
to repair the house for he is compelled to keep the
houses in repair ^{as far as} but if there is any wood on the
land he has no right to cut what is call'd timber
trees ^{for fuel} which depends upon what is so call'd

(9) If the waste be committed every where (sparsim) the whole is recovered, but if in only one place, that place & spot is recovered, let it be

Breakdown Waste { Co Lit 53. Mosse 512 } in the country.

Go out about trees of any kind like me in a garden is waste to all the trees & chestnut, ornamented & put trees in, & as to fuel

This right treated in the Strickland - one of the kind. The test had no trees on the land where as good as what he is doing - he cut trees, sold them, & bought others & it was held to be waste

If the injury done was in consequence of his own misconduct not he has no right to cut the trees but must obtain from his own house a Rol. As if he neglected the land & it was blown over by a storm in consequence of his neglect, ^{he repairs} he repairs from his own purse

Any wood may be cut if the (2 Rol 514) dies if they are called timber trees in the country & they may be cut for fire wood

If a man should sell the land and all on it except the house the house must stand there but if the house should be moved the land and go to the purchaser (Lvo & 690) & the house and go to the heir & real that it not be Ex, for when any thing is exalted it remains as before & does not

Exile Damages ^{if the thing wasted} ^{and forfeited} for waste more if trees are cut it is waste. The thing ^{itself} can be recovered - but, If land is given for 50 acres

(1) the wife or her acres only - he forfeits only the 10 acres to him & Co Lit 54. If the land may be at an end before the wife - but then the house and the forfeited, so damages only for the land wasted can be recovered.

Wab. Act. ^{no} Waste

See ³ are liable for the acts
of waste (lrs 2 590) committed by the grantee for not
of the acts of God (10 lrs 31.) when by accident as a chimney
blowing down tent could be repaired

afford a remedy ^{in these cases} - Ch awards the injunction to
the Ab. do in the affd^d - thing made - & when
made before the case is heard the grantee is deterred
any injunctⁿ after the hearing the grantee a ser.
detention injunctⁿ if waste has been committed.
(the Ab. will always do when the Ch. has not
been awarded a remedy - But the particular
waste ^{of Ch.} done is a more serious one than the landlord
not much as when a lease is made
without an impediment of waste - the Ch.
often give as remedy - but the Ch. gives a
diff. construction to these words from what
Ch. of law and here done - If the note is that
much an extended power of waste and not
to the intent of the party granting the grant -
for by such a power the grantee might
destroy the whole estate therefore the Ch. grant
an injunction, the power is too general malicious
waste; 10 lrs 169. 2 Sal 216. 10 lrs 161. And 107. 2 Bro. Ch. 89. See D. R. 10 lrs 161.

Ch. of the law interfered when a lease was granted
for 20 years without impeachment of waste & he was the
19 years had cut but the receipt was - but now he cuts
a lot of trees to make a profit of it - but the Ch. held
that if he had cut them years ago he would have
been well enough (20 lrs 295) but here the grantee
an injunctⁿ 1 P W 525. 1 Ves 255. 3 Atk 217
2 Bro Ch 69. 1 Ves 521. 3 Brown Ch 549, 555

Real de Waste } Ct of Lun refused a grant or injunc-
tion of waste & the new p^{ro} had the legal title ^{only} held in trust. & they wd not consider him as being capable of waste wtho he had no beneficial interest; but Ct will in the case inquire the estate you trust not to come to show of L. Ray 60, 3 Atk 94, 702, 3 ER 450) matter. ^{Left an}
estates give B 10 p^{ro} 10 rem^t to B. for life ever the
in fee, and if it had so committed the matter could be
binding at p^{ro} he is not the immediate rem^t man
with the rem^t B, ^{living} at ^{not} ^{now} in fee. the grants
an injunction in favor of C to stay the waste but
I don't know but this was stretching the maxim
of Lun. too far. Har. Co. Lit. 54a. 3 Atk 95. 210.

But if a lease be made
to A. for life, rem^t to B for years, rem^t to C. for fee, ~~an~~ an act immediately
lies for the est. for years is no impediment. Co. lit 54a

Real Actions

Action of Ejectment

The act of Eject proceeds in the ground & the owner is in possession & out of possession & is not to recover the thing itself together with Damages & it is certain in the ground of the act of Ejectment the Plaintiff must always be in possession.

A is actually in possession & B comes in & cuts the trees - then he knows B dispossesses the land. now the act of Eject does not settle the title. even if B pleads the title is avoided. and, & though is no reason why the title should not settle question as to the title, but it does not.

But ^{now} it wishes to have the title settled & thus he considers himself is ousted & the law suffers. & by this means the act of Eject settles the title - & this is the way made use of in the States & is Eng. also & is now considered as a legal remedy.

The act of Ejectment was applied only for an act to recover the thing for & but now is applied to act for the fees - the formerly had the only object of recovering the thing alone; together with the Damages also - & when decided - the executor issued a writ out any body who might be in possession - no matter who was record at - but now a person who had the legal title might be in - he was turned out notwithstanding - but the law does not

Journal of the

The following is a list of the names of the persons who have been members of the Society since its formation in 1885. The names are arranged in alphabetical order of their surnames. The names of the persons who have died are marked with a cross (x) after their names. The names of the persons who have been elected to the office of President are marked with a star (*) after their names. The names of the persons who have been elected to the office of Secretary are marked with a dagger (†) after their names. The names of the persons who have been elected to the office of Treasurer are marked with a double dagger (‡) after their names. The names of the persons who have been elected to the office of Librarian are marked with a section sign (§) after their names. The names of the persons who have been elected to the office of Auditor are marked with a double section sign (§§) after their names. The names of the persons who have been elected to the office of Corresponding Secretary are marked with a double dagger (‡) after their names. The names of the persons who have been elected to the office of Corresponding Treasurer are marked with a double dagger (‡) after their names. The names of the persons who have been elected to the office of Corresponding Librarian are marked with a double dagger (‡) after their names. The names of the persons who have been elected to the office of Corresponding Auditor are marked with a double dagger (‡) after their names. The names of the persons who have been elected to the office of Corresponding Corresponding Secretary are marked with a double dagger (‡) after their names. The names of the persons who have been elected to the office of Corresponding Corresponding Treasurer are marked with a double dagger (‡) after their names. The names of the persons who have been elected to the office of Corresponding Corresponding Librarian are marked with a double dagger (‡) after their names. The names of the persons who have been elected to the office of Corresponding Corresponding Auditor are marked with a double dagger (‡) after their names.

7
Geetment } conclude him but he says the
law is at wth the person wanting him by ex^{co}
Remark on the

The Thrift Delins not only the little but also of half
of the plot of land to the Thrift & this is a very difficult con-
fession not used & is unf of the act as in case of
dett and the land is sett off to the and by the law
The prop is not delind to him but only the little &
the quest must be hot by the Court ^{in every prop} & this is supert
by reason - for the ex may not have been prop,
erly executed - & the Thrift may not choose to
surrender - but in the first case - the question
is considered by settled by the judgt.

And this had the

rise shortly after the Restoration & the best stage
of it was that it clears land ^{wh. was} and the prop of B.
B. also claiming his land ^{was} as goes to B & asks him to
a house - & will get C. to turn over back to
the man must see C. - the Agree in the land & make
the house C. B. & C. at last and orders him off - & B
goes off - then he was C. the next day & the
C. writes a letter to A. & tells him he has no
little but he told him ^(B) to go off - & was he is
und - & A sees the to be the law & that he had be-
hind also ^{with C} - & then makes appl - right C. to
come in ^{in place of C} and defend the is limited - & so he
takes the place of C. & the little is third by the
act & the is the only quest in issue. & so it
stood for a long time - but it is now all a
fiction - & no law is made - but the act is
done in the name of some British person

My dear Mr. [Name],
I have just received your letter of the 10th inst. and am
glad to hear that you are well. I am writing you a few lines
to let you know that I am still in the same old place.
I have not much news to write at present. I am
well and hope these few lines will find you the same.
I am, dear Mr. [Name], very respectfully,
Your obedient servant,
[Signature]

I am, dear Mr. [Name], very respectfully,
Your obedient servant,
[Signature]

I am, dear Mr. [Name], very respectfully,
Your obedient servant,
[Signature]

Debt for Rent The act of Debt in a few cases is made use of to recover a real right

By rent is meant an annual sum reserved - If the annual rent is not per, prop. but real prop. & If J. who leased to G. dies the rent will not go to his Ex^r but will go when the land goes - for it runs with the land - & the stipulating for the rent is proof he does not intend to part with the est. - & this is an incorporeal hereditament, but it is not so important as the counts are in Eng. As it is of some importance - for this rent will go to one of the child. but in Eng. it is not of the eldest son. & as the rent is lost by the heir or the child who holds it - & this is governed by the same laws that govern real prop.

The Remedy for the non pay^t of the rent by a old Act it is by an act of Debt. as it was passed long before the emigration of our ancestors.

If the rent is in arrear it is otherwise for then it is per. prop. for had the less^r recovered it would have been personal prop. Engd the Ex^r dies. But when the less^r intended to turn his est. into per. prop. & sells it & takes the Bonds & Notes - & the Ex^r the rules in case of the non pay^t of them.

If when the act of rent is lost it should appear the less^r had no title, the act will fail. - The Plea is that the less^r says the less^r had nothing in the tenement, or the Plea specially of some other person has entered & evicts the less^r says he owes nothing, ^{as is not bound to pay any rent.} Pleas 548, 242. Hob. 326.

I before mentioned that the Landlord is bound by C. & W. to let the land into a Jt. Ten^t

Debt for Rent { ^{in D.C. is treated} a way of partition - if you own the
ground of the Debt, will not ~~consent~~ consent to the
partition, & here the D.C. must force the Debt title
as well as his own. & also that he has requested Debt
to make partition & he did not. All the facts
must be proved & when this is done if the jury
find in D.C. favor - judgment is entered that partition
be made. But the C.L. mode is not every when
pursued - the C.L. mode is for the Sheriff to take
12 men & he goes out with them & they divide
up land, ^{equally} by quantity & quality - the Sheriff app
oes - & then reports to the Ct. - then the partition
may be litigated, & if it is decided it is a good
& remains good forever - if not the Ct. app
oints another jury.

In law the Sheriff takes only 3-
men & then it may ~~be~~ not be litigated but
is ^{returning to the clerk's office} ~~settled~~ settled by the title - unless there has been
some other irregularity of the proceedings.

In the C.L. the partition
is returned back into the County Clerk's Office & the
title is settled.

All the D.C. that is that in the variations, ^{from C.L.} the Ct
has nothing more to do with ^{the case} after the appoint-
ment of the 12 men or jury.

Some observations with respect to Trustees

The Trustees of Real prop bring the suit in the
name of the ~~estate~~ Trust.

The time was when it was

thought that the assignee Trust - I were being wound

Trustee's

And some cases arose in which it seemed
that it would be better for ^{the father} to bring the suit - as
in the case where 1000 £ was given ^{by the father} to the daughter & he
ruined out of timber on a ^{large} certain land - but the law
promised the father to pay the £1000 if he did not
order in his will to have the timber cut - He was
agreed to & it was ^{not} specified in the will, ^{the law was made by} the act
was not in the name of the trustee but in
favor of the daughter or the promise of the father.
I think that - personed as it has been put in
the name of the trustee you have - but it has
never been put in his name when it has been
as was for the benefit of the trustee, even in a bond
or note, but only as promises.

In Vermont as it was not
cited in the Bond ^{as} the name of the trustee you trust.
It was a case in which the trustee was sued.

But there is no case in real prop. but when the trustee
was not in the name of the trustee - & if he will
not sue when he should, he is compellable in the case

There are
cases in which the trustee can raise & compel the
conveyance of the title to the trustee you trust ^{that is the case} & it is
in which the trustee can be compelled.
The case is - if the trustee is not a party - it is
the estate was conveyed to the trustee is trust for infant child
when those child are grown up. They can compel
the trustee to convey the title. But when the son
was a spendthrift. The father's conveyance is trust for the
benefit of his son & his child & the grand child.
The son cannot compel the conveyance - but when the
grand child comes of age they can compel the conveyance.

Trustees &c { And unless the trustee sells
the land he can't affect the title of the estate you
want. A ^{man} not of the same name of the
trust. but if he did not know he will hold
the title. but if he did it is fraud in him.

And from this arises an important
quest. for this country - & so in most of the States
all titles are ordered to be recorded for the infor-
mation of the public - And most usually
the trust appears in the face of the deed - &
there is not the information given? for the man
who is about to purchase can by looking at the
Deed discover the truth of title, & the true words
information always obtained when it is in the power
of the man to alter it. - Therefore this is con-
structive notice & so I apprehend it will be
decided for it is so in the kind of deeds

And the
kind of implied trusts - the J. L. has land in a neigh-
bouring place that he wishes to buy & he employs J. K.
to go & purchase it & take a deed to himself &
then return & give a deed to J. L. J. K. goes & buys
the land then refuses to convey the prop. to J. L. - In the
case J. K. will be compelled to convey - & the fact
will be proved by parol evi. ^{fact is proved} & this is not my be-
lieve introduced in cases of fraud - men & not
deeds.

And there is another ground by which the trustee
be compelled to convey for the bargain is not
within the title of J. K. for that relates to real convey-
ances & not to the bargain

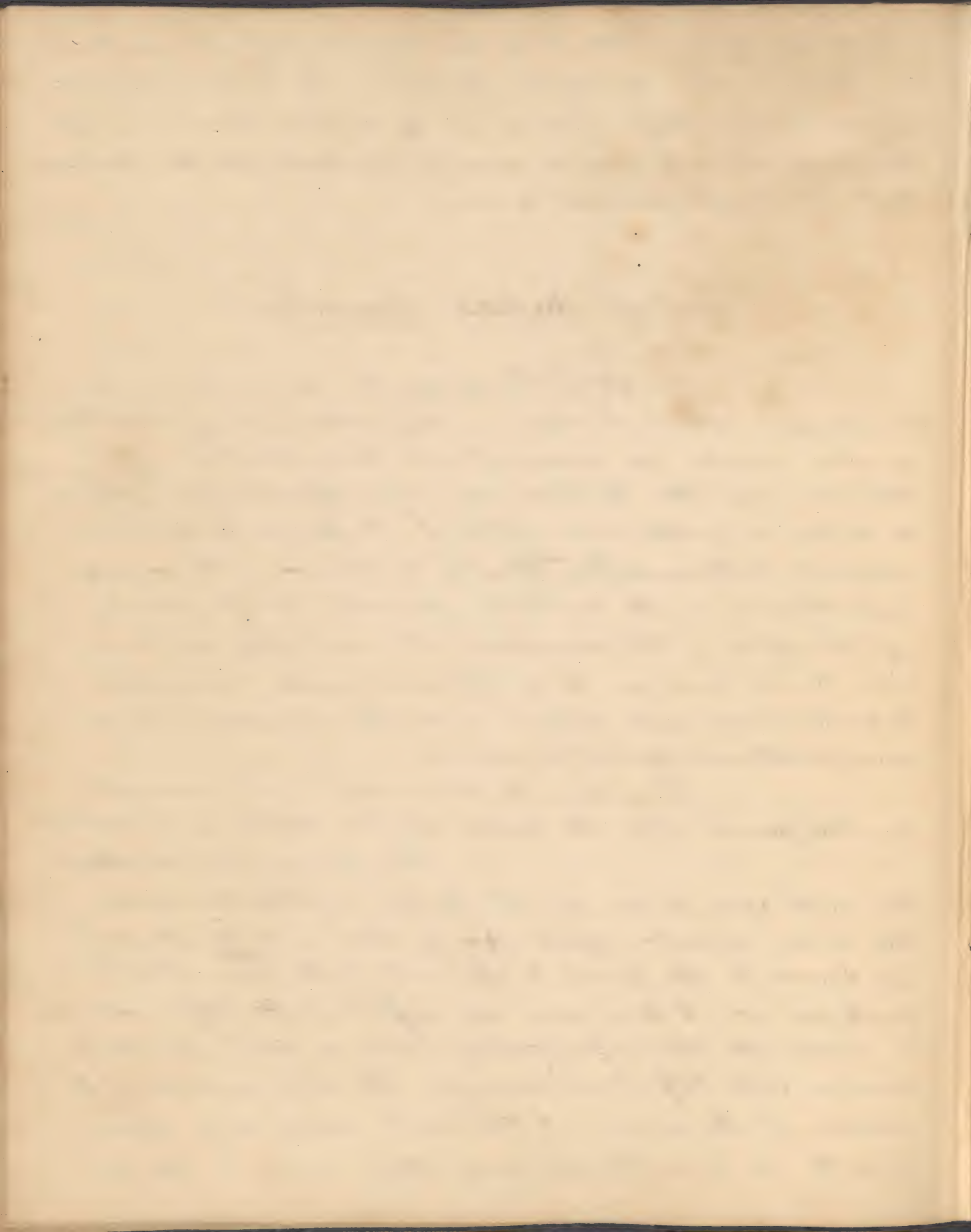
Trustees &c } and so far as that may be introduced
in these cases of implied trusts. In the case of convey-
ance to his Wife by means of a third Person, if the
third person refuses to convey or surrender his trust after the Husband's
death. he may be compelled to convey.

Writ of Audita Querela

An Audita querela is, a remedy, given
to a Person where he has no opportunity to go into Court
as when made an immediate Ex^{or}. & he has a good
Defence agt the Ex^{or} but has not opportunity ^{making of} defence
as when a judgment is obtained & the judgment paid &
arrest taken - after ^{wards} the Ex^{or} is dead - the writ
is produced - the audita querela is the remedy
agt the effect of this execution; this writ stops all proce-
dings & gives damages. So if Plff agrees to settle & discontinue
his suit & does not, but goes on & states execution. On the
ground of settlement this writ is awarded.

It is given in all cases in which something
has happened after the judgment by which the Ex^{or} should be stopped.

The Party who mistakes for
this writ goes to one of the Judges & states the case -
this is on a habeas appl^{ca} - for he does not try the question
but demands the proof by affidavit of the ^{Plff} man that the
facts are so. & the man the affidavit of the Plff is obtained
he signs the writ periously taking a bond of a third
person of the Plff to indemnify - the Diff incurs of the
failure of the case - & this writ stops every thing -
as to the it - it is charges every thing - even if the prop



Audita Quereles at the last, it is stated, & the
the writ comes into of it & if the Off had no
cause of complaint the Bond is forfeited. — but
if found for the Off the Bond is discharged &
he also recovers all the Damages he may have sustained
precisely as he and have done in an action on the case
as supposed in the case above the Off is the and. que.
had been imprisoned — the Damages may be high
Mr Jones 278. Cro Jac 9. Cro E. 443. 1 Rol 206. 1 Sid
49.

This Writ I suppose myself to be granted by
the same persons who grant the mandamus & in
the Judges who sit in the highest Ct of judicature
But as far
it is granted only by the Chief Justice ^{E.C.} but the orig-
inal of this I can't tell. I suppose no other more men
living — for we have not yet established it —
But in the other States I suppose it is as at E.C.

This bond cannot be
challenged. but it is entirely forfeited in case of fail-
ure in establishing the facts or when the Writ is for-
mated.

If the man has not paid himself is in the
case of St Ches & he has paid it up — the part of
— is the part of the whole, & therefore the audita
querela may be granted in this case as well as in those
above.







Real Property
Mortgages

Real Property

Divided into Corporate & Incorporal Arbitraments
Corporate - is land & every thing upon it -
upon the death of the owner without devise it goes to
the person called his, - if crops are upon the land he
must expect ^{the} in the conveyance - so with any thing else
as a shop Born when the land is conveyed

^{him} ~~By~~ giving to ^{him} his heirs is a fee simple - but if
his heirs of his body it is diff. - viz estate tail

All these estates of land - 1 kind, freehold, 1st fee
tail, 2^d fee simple & 3^d fee estate for life

Words are added to convey lands, as "to J. & his heirs
and he may then do with it as he pleases, if he may do
with it if he pleases

An Estate tail, is an estate given to particular heirs, & it can
descend to no body but heirs of his body, and the according
to law, if tenant in tail alienate such estate, heirs can
void the contract;

If estate is given to J. & his ^{male} heirs - law knows no
such conveyance - it is nothing more than an estate for
life - not as with her prop^y - Estate must be given to J.
& the male heirs of his body to be made an estate tail

^{provey} These Est^s of inheritance. The third is not,

Est of fee simple (but he convey & expect by word "to J.
& his heirs, Lines with will, that is construed according
to intention. - Intention is to be regarded entirely
with will - and to law.

A freehold, can never be made to convey ^{all} in future, except
to R.L. - & the in many in reversion,

Can still give to J. & J.

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Then freehold Estates, you can't limit an estate, upon an estate
it can't give an estate to J^r for ever, then it must be ^{to} R
But will seems, estate to J^r for ever & then to B. W. & C.,
then if J^r dies before twenty one the estate becomes, B. W. & C.
Real Estates, are ^{acq^d} by Descent & by purchase
Descent - when ~~can~~ a man dies & his heirs get it -
Purchase, when a man gives an equivalent -
Mortgage, this ^{is} Real Est^t of life - is an estate for ^{his} life or
the life of a mother, as J^r has the ^{best} ^{est^t} for ^{the} life of B. W., but
J^r dies before 21, - heirs not ment^d if they were it would
descend to them, - otherwise it goes to B. W. as the equiv^{al} has
been paid for his life -
Estates for life, ~~are~~ this is estate to last for life - if J^r dies
an estate ~~as long as the person~~ a widow it is an est for life - she never
~~estate by~~ Curtesy
never get married, - but if ^{an} ^{man} ^{who} ^{has} ^{property}
If a man marries a wife, he has an est for life ⁱⁿ ^{the} ^{property}
when he has children he has by curtesy 1 R. 351
The right the Widow ^{has} ⁱⁿ ^{the} ^{property} is what is call^d ^{the} ^{right} ^{of} ^{curtesy}
of property - for whatever is done to the estate is for his benefit
and the ^{property} ^{is} ⁱⁿ ^{the} ^{property} ^{done} ^{to} ^{him}.
But if it is ⁱⁿ ^{the} ^{property} ^{done} ^{to} ^{the} ^{estate}, the suit
must be brought in her name as well as to him
Curtesy Estate commences at the death of the wife
if he has had a child by her born alive, & could have
inherited the estate - no matter if the wife dies
Before to give curtesy - the wife must not only have
had ^{the} ^{property} - but must have been actually seized by C. L.
In several States, laws, that when a man devises
an estate he devises all his estate - whether he has ^{survived}
or not. Lived by C. L. he must have been seized
or he could not devise; In Maryland & Virginia ^{that}
when nothing said, but ^{if} ^{all} ^{is} ^{devised}, he ^{devises} ^{that}
which he was seized as well as that with which he
was not seized of

No estate but what is so considerable of ex. ~~as the~~

When a wife marries he (the husband) becomes civil
in rent, & after the death of the wife has the estate for life -
2 Rev Wars 229, 1st 607, 2nd 47

When a wife has real prop^r to her separate
use, husband not right of custody - - 3d Att 893
Oster in Doorn

Wte in Doreen

This an estate to which the wife is entitled to at her Hus. death — she is entitled to $\frac{1}{2}$ of real estate which he is seized of this does not depend upon his will, — that is, if all the lands are taken for debt — if he dies intestate the wife may be wealthy
If she had had issue

Thus not liable to be heard, by her assuming ^{any part of the case} and being heard
if she is reconciled to her afterwards, she becomes entitled
to the issue, thus by C.L. 2 Bl ~~211~~ 130

Done by settling a jointure before marriage.
A legal jointure is real prop. settled upon a wife.
It is not less than an est. for life, ² before marriage.

It must be a conveyance I not to a house

And must be made by Triton^{us} in lieu of Power.

Joint sometimes settle after Men. A good, but it
must have been agreed to be made before the Men. ^{plan} ^{books}

But if after war. I was a great ^{it is} before - not binding

It is ~~excuse~~ by a man - not a contraction but
provisional

Why not make it after Nov - Ans. she does not
will; independent of her Hrs. ^{But} 4 Co 4c 2m 30

It is a good practice to give her $\frac{1}{2}$ if still, but she wants to know that I am still more -

Rec^d of the Legation given will destroy other Leg. Docs
and ~~be~~ 3 etc

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11
If she joins in a mortgage she may redeem & then take her
dower, — If holds the remainder until the other heir comes & pays
bills on her $\frac{1}{2}$ of the loan money
the 7/8/57. Case of Dowry otherwise — she holds the whole until
they pay her.

Can a wife be endowed with an equity of redemption?
Is dies cum with equity of redemption, and rule the wife
wife could not be endowed with it —

Decided in Chan. ~~that~~ she would be endowed — for
this differs not from all real prop Chan. Cas 3 of 1 18th
336 2 278

Estate tail after possibility, before extinction.

Mrs. holds the estate only for life, — he is not liable
for arrears to hit 28.

Est. for life by op^r of land.

Conventional Estate — may be either for one's life
or for the life of another.

If tenant in Tail grant an Estate for life, it is not
for that of grantee, but for his own life, for if he
dies he can give the land to whomever he pleases & take the Estate
from the heirs

It is a life for life even with any exception
to it, & if in bargain it carries it for life

If it be of a chattel it vests absolutely in grantee
this is on the notion formerly entertained that a

Estate could not be granted longer than for life — often
the Ward Heirs were introduced to carry a fee, & it
was common use the land and to carry both
Real & Personal Property 1 Inst 245

This Interest is a feeble Interest — on this feeble
Estate you can limit your Estate to take place
on an event that may never happen, as an

Estate for life to B's eldest son, or when he shall be born, If the child is born during the life estate the remainderman may have the estate limited to him, but if he dies before the Remainderman is born, he can take at all -

If the previous Estate is for years it can't take from the Remainder with it is a vested Remainder. The Reason, that if the life Estate man dies it can't go to his Ex. is because it is a particular & therefore can't go to him - Part of what to his Heir, he takes of an Inheritable Estate, & why not coherent, because the whole & not a part coheres -

Incidents to Estate for life

1 Every term for life, is liable for Waste to some body or other - The lessee is liable to lessee for Waste not only that he does, but that any one does - he is liable in an action for damages - triple damages, given & the thing restored -

2 If the term conveys a joint Estate then he has, he forfeits his own - This is for on a Reversion that has ceased at least in this country -

Many States in the Union have prohibited entailed estates. Does. Suppose A ~~man~~ should convey an estate to B and the heirs of his body, what would it become - an estate for life - or a fee simple? a fee simple in Reversion by express estate
A. G. de Beers

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Handwritten text centered on the page, possibly a signature or a date.

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Doctrine of English law

Butlinians to be crops sown by that on the ground whether
in years or life - considered sometimes as great policy sometimes
personal - when sowed by deed considered as real - when
not sowed

If the person conveying wishes to assume the Quail
he must make reservation

As not noted but hopes ~~to~~ the
As ^{person} make as well & less and his Court. well
with the lands, - if he intended to except the power
if he gets well. will continue good, but if the same will later

If man is presented for Wells of Emble, in this
case recorded as such this, — Emble will be such;

If a testator of sound mind dies before husband, it is personal & goes to the executor of testator's estate.

This holds good in all cases when the owner
could not see the end of his ear; or if that is

is But in case of a short dry winter, & the
maries, be a harvest - Cuck to the top - not of man's but of his own.

But for years it is cons. as real property because he knows he won't be able to reap the harvest - it goes to the tenant

Sent at will, if the ~~books~~^{papers} are sent to. Put
 by his own will - Ent. Lessons - Lessons of Lipp
 books are sent to the Ent. Men - that should inform to Ent.
 W. L. 3-6. 1 Rob. 727. 2 AL 445.

Set of roses in guest white robe

At his to the lady

Rule in case 1 Co that whenever an estate is given to man for life & then to his heirs, - it is a fee simple given to A for life & then to heirs of his body. It is not tail - heirs create fee, simple - heirs of body. Est. tent -

— affect at some future day, in consequence of the death of se Desires
at the Embl. or of much more value than, that at the time of making
will, — allowance is made for the increase —

Legal meaning to be applied to technical terms, when such terms only are used. But if there are other words, which go to make any restriction, it is for that manifest an intention.

But if not restricted to any particular heirs, it is left alone - it is then fee simple.

If meaning of estate for life - it is fee for life -

These questions ^{always} have been very contradictory decisions.

An Estate was given a man with power to make a jointure, & Mann v. W. - decided that the intention was to give an estate for life - if not the power to give a jointure was useless, & since has that right - if he owns the fee simple - Reese -

But case which has been decided is by Burdett v. Burdett - Doug. case in which it was decided as the former, the contrary to their judgment of the Judges.

Rule if it is compelled to give for life, intention must prevail.

1 Co 410, If an estate is given to one for life, that the same time to his heirs &c. ^{if he survive} see this, it is important "his" always conveys a fee simple.

2 Co 100, If a fee is given to one for life - this conveys an estate for life only. Cases of 100 - 219, 280.

Many writers of civil law have held contrary to these opinions & Mann v. W. on the above points.

Estate life then purchase

1. Estate for years - is an estate in land, but considered personal prop. & goes to the Ex^r if not heirs -

It has a certain compass & a certain period.

Lease for a month is a lease for years, as much as one for a 100 years.

An estate for 200 years if I should live so long.

"of Tension, that intention rules, or permits a great technical expert, 1899 479

is an est for life.

Like is like to life for next - as in that for life -

Then the accords of the best to you you receive the damages as well as

An Est for years at his suppⁿ a settled for ever in but not a contract remained

that it conveys Est to B, with remainder to C then of his nothing more to do with it - if next is conveyed C brings the act

Est is given to B, & remainder to C added on of C. this conveyance remained - (as that, there is no place for the freehold to rest his foot -

In your case freehold passed immediately to C. who in future has charge of it - in that it differs from est for life

Life estate being for life can't commence in future unless on remainder by O.L.

The owner of Est for life has certain privileges which that for years has not - to rest his right hold the best off has not.

Differs from

Wife of wife who has Est. for life with all that interest, if he dies as soon as he dies it belongs to her, but in est for life he can't it, if he dies but if he dies not it belongs to the wife

Both the tenancies, but has right of free hold through both to -

Word to let est for life not part. to - annual words are, let, give, demise to - Murr' 887 Not 34. Cro. J 92. Car B. 270

1 When a person gives an Est. to one for life with remainder to another, he surrenders all his interest in the Est. Tenet is then accountable to the remainderer. Art.

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Where there is an act of uncertainty, see with 7-14
or 21 of the class, this is good - 2 Bar. 14, 23, 1 Wils 289

This Estate begins from the time of the lease to be
had. And as the estate is from the time of entry upon the

In a will, an estate purshold may commence in
future - but restricted to certain limits - as it was
commence of 20 years if it is to commence after three
times it is good - after death of testator. - give to the
the child when twenty or 25 years of age, - It may extend
to 21 years & 9 months,

In Con. You must give it to a person in esse
or to an immediate descendant of person in esse. i.e. not to
grand children -

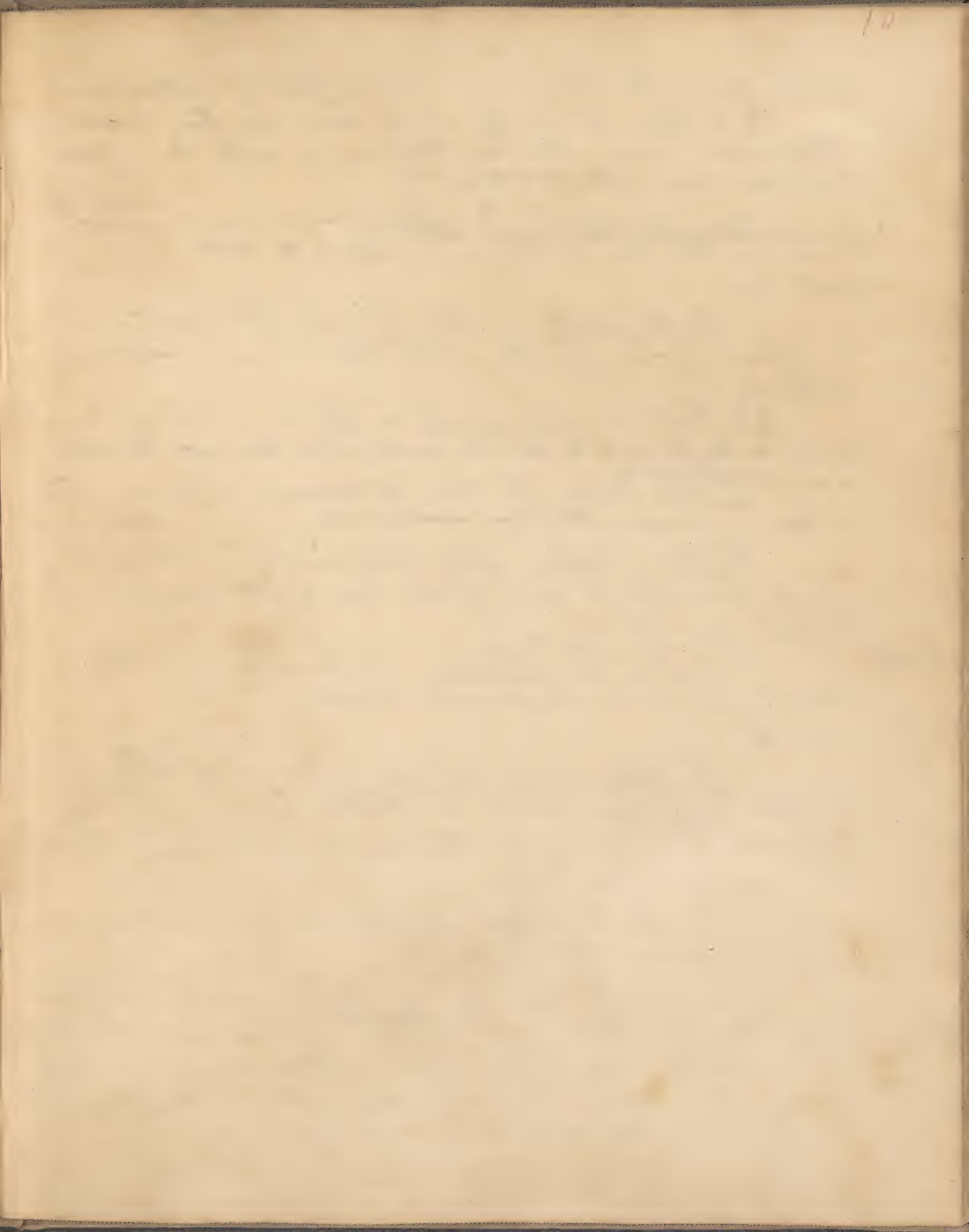
A Estate has been given to a man, & when he is
dead it supposes he is worth out if he is gone over -
- What his means by this being without issue
is a question. ~~But~~ If it is, whether he has had issue
or after having issue he dies & leaves none. Authorities on
the side.

A life estate could be carried out of 100 years - for
it is the greater - notwithstanding it is for 500 years.
but by devise it can be carried out. Estates may be given
for as many as you please, if they are all in esse

Estates at Will

This is neither real nor personal property - it is nothing
more than a license, no attachment can reach it - nor ex-
ecution - It depends upon the will of both the parties
& either may terminate it at pleasure Co. Lit. 55; Moore 1778
Consequences of such lease & will is good - the test
not to be observed -

Defendant - by 4 parts words - as ordering.



tent to quit the premises - but it is under restrictions
If he does not go off at the end - he then becomes
a trespasser. Have Stat by that require certain days of notice
Co Lit 45 - ruling for the tent to quit in

x ^{any act which} diminish the ^{value} of the ^{upper} estate, ^{which would} as entering the land & plowing - defeats the estate
1 Hall 880

^{On the death} of either life or life estate ends
- Repears going off the estate put an end also, Waste
Co Lit 57.

When tenant at will commits a ^{will} trespass is a delicate question
Co Lit, for the fact that the tenant will commits which terminate the estate
is an act of trespass. ^{if the tenant} does the land to commence at future time
it does not injure the life estate at will 1 Rolle 880

Rights of life - after termination, 1st Right of
ingress & egress to carry off his fuel & other property if
determined by life -

But if he determines it himself not so as
to fuel. but as to private property
1 Sal 413

If life will not go when ordered by life
he then ^{will} ^{be} ^{the} ^{trespasser} in all his future act - he has
no right to stay longer than reasonable time, to care
his property. Co E 484

The ^{limit} of time by Stat. is to prevent an
Ejectment, during that time.

People who take land in shares - are a distinct from
these tenants at will - both ^{have} a right here to the
fuel - and in case of damages, the owner as trustee
brings the action; the life has nothing but a right
to cultivate, under the license of the owner

^{the letter}
He may see him as a trespasser every week or day after he has
been ordered off.

A license is always revocable therefore every act
of ownership of Wils 25; after the revocation is a trespass.

What is to be paid under circumstances by the life
in those cases where the life holds under a ^{small lease or principle}
of lease holds under pool, the life has a claim
of tenant's off by life, to the whole value of the incro; - But if
the life Detention is left has a claim for the rent - and the court by force
is long considered as the ^{best evidence}
But if the life is ^{staying it} it must be done and

Distinct ^{lease} is also the lease covers the land. If that p. m. holds under power
lease for a year, he must pay the amount of rent as evidence of what was due for rent, but
if rent at will, the court obliges him to pay only what is reasonable

^{lease} Tenant by Sufferance is one who has had an estate
by ~~lease~~ but the time has run out. & he still continues
without any renewal of the lease.

In this case the tenant is liable to pay the
rent of the original lease - & the life impliedly agrees
to receive this as rent if suffering him to remain

He in fact is only tenant at will - & is bound by the
same provisions & liable to the same encumbrances.

^{to wit the wife, state, life, money &c.}
These are all Estates in condition, & are defeated
by some event - or they become void by some particular
event. Co Lit 201

^{notes are Distinct or isolated}
Estates of Condition of 3 sorts. 1st of Condition im-
plied - 2nd Condition expressed.

1st Condition implied - where there are ^{conditions implied} duties necessary
by the very nature of the instrument, ^{agreed to} is. Offices - the person receiving it agrees
to perform the duties, if he does not perform them
the Estate is defeated. - ex E. Estate for life &c is
principle of Ch. Co Lit 215, & Bl 159.

2nd Express Conditions are such as have express qual-
ification annex to them, by which they are either precedent or
Co Lit 201 subsequent. By which the estate becomes either created or
defeated

By a cond^o precedent is meant something that takes place before the estate can arise - this not applied to Estates in fee simple, because they cannot come in in future immediately by deed.

By Cond^o subsequent is the estate is vested but in case of some event estate is defeated - as Mortgage the title good until the payment of a certain sum - if defeated by the payment of that money to the land in fee simple provided he pays annually \$100. The estate is vested immediately but if the \$100 is not paid the grantor acquires himself of the circumstance & reverts the Estate.

Conditions in Law & Conditions in Deed

1st Cond^o in Law is a limitation

An estate may be so acted to be defeated by a certain act - It then is at an end - fresh & itself

2nd Cond^o in Deed is where it requires some act of the grantor to defeat the estate as entering upon it. Words "so long as he continues to do such acts" or "until such a thing takes place"

these Cond^o in Law also, "while", "so long", "until"

Words "provided he or they (Manager his heirs) pay 10%," show if they don't pay it - the estate continues until the grantor enters, as does of other possession also "so that" - These nice distinctions

2 BL 155, 10 Co 41, 3 BR. 411 - this Cond^o in Deed

It is not universally true that the words "provided he pay" do not make Cond^o in Deed, and the Estate then reverts. for a third person, may be interested

Case as for if the estate is limited over to a third person, in case of 1 Vent 202, Cro E 205 nonperformance of Cond^o - it is considered as a limit^o 2 BL 155

Limit^o & press Cond^o subsequent, by which it will be defeated, if it is impossible, - the consequence is good

Mortgages.

(d) Chancery will in this case as in many others decide differt from a Court of law. W^h the decision accord^s to law would be a sound policy. —

Absolute - as if on condⁿ of running 20 Miles of Min^r Post
201, 206, 217, 2 Bl. 257, Do it by the act of God. & he must marry L. & she dies.

So if the thing to be done is a gift law - he is under
no obligation - the estate rests in the man

Do it contrary to the notion of the Estate - as
giving a fee simple on condition that he never sells it. -

If Condⁿ is precedes - & the estate is not the
next estate in tail that he does - it never will rest
although the condⁿ is impossible & not law or against.

Mortgages
Do understand a

A Mortgage is substantially a real est. pledge
to a Creditor as security for a Debt - & if

It is done by giving a deed, presupposing a Debt
& on condition of the payment of the Debt, the deed
is of no effect -

1st thing to be done, is for A to make out
his Mort. Deed to B, liable to be defeated on the payment
of the Debt. - There is then no title in A. B owns
it - but soon as it pays. The title is re-vested
- tho he has no deed - B then ^{or ought to} give back
the deed. The payment may be proved by parol

If the Mort^r is out of possession he then would be
bringing a suit, but he never is out of possession, therefore he is
the unnecessary.

2^d He did not pay the money - then by the con-
tract it is B's money -

(d)

But by Chancery in this case has gone directly contrary to
law - But it is not contrary to law - only qualifies it by sound policy

Principle upon which Chas. says is - that when they may
say you have an equity of redemption (i.e.) & take your
Deed is - that is on the ground of policy - But no more
see below. B. 2 Pl 15929.

If court or made the Chas. takes them up & winds
them all together -

^a Policy is the not suff. men to make bargains by
which the sharp & strong take away the prop. of the
Dull & weak.

^b Chas. says - you shall hold this mortgage
& take the rents & profits until you are paid - in
cut down all the fees, but you shall take \$10000
per 1000, - now

The State of things is that it gives a Debt to B, he has
a Debt if he pd a sum of money in a New town
now it always holds equity of redemption, & as
much may be granted & Divided as any thing else
therefore it is not estate

But in the Mortgage it is personal
prop. & as such he may Divise it, but as soon
as the Debt is paid, the Debt of M is determined, so that he becomes only trustee
to M. B. 14. 15

If the wife was a Mortgagee she (the M.) may
dispose of it, But if she was a Mortgagor she can't
put it into A.

But Equity of redemption is real property
the Mortgage is personal. Bro 9593.

The Mortgage only draws the rent until the
Debt is paid

1882

16
Nature of the Remainders on Mortgages.

This term in one sense is a sort of will for he must go when Mort^r says so, but he is not sort of will in every sense - for in case of the crop being on land he takes it, but of course pays rent. Mort^r does not; Mortgages may be bought off by Mort^r but then Mort^r must give an exact account, of all he receives from the land. but before the Mortgage comes the Mort^r takes all the

It is in consequence of this law that the courts of Chan^{cy} are so often appealed to, to settle accounts -

There is a difference between Mort. in fee & Mort. for years but there is scarcely such a thing in this country now that and that was, much a thing - was that if the man died the wife would have a right of dower in the Mort estate therefore they instituted the Mort for years.

The way of avoiding the dower was to Mort. the estate & then take a lease for a 1000 y^r or so - for the wife had no right of dower in an estate for years -

In the U.S. Mort. are all for fee

Mortgages in fee.

The other day you the estate entirely to W^m after breach & perfect one - Chancery interfered & formed the entire new system - I know what it would have been had they not interfered. The ground upon which the Chancery went was that there was some ground upon which the court was invalid

Principle upon which it is done

Chancery goes on the ground of sound policy. It was justifiable in opposing law, as far as this sound policy was opposed to law.

The Court of Chancery will decree such the land & the
payment of arrears.

The debt is a personal contract & the mortgagee the
mortgagee ^{land} is only an incident par 15

By an assignment of a land the mortgage by which that
land is secured passes with it

Chancery considers the Mortg^{ee} as entitled to his debt
if anything

As soon as the debt is ~~paid~~^{created} the Mortgagee
may take possession;

It may be that Mortg^{ee} will not receive the
money - a tender then answers ^{to} the payment, & the
Mortg^{ee} may take possession

There is a duty imposed upon the Mort^g to keep
the money for the Mortgagee when he calls for it -

And if there is no antecedent debt the Mortgage is
of no effect if, if it is a gratuitous Mort & the tender
is made all is discharged. Lit 334. See

When the courts of Chancery first undertook to lend
as they have, a new regard between them & those of law
- the Chancery was victory -

Derived this principle that when the debt
was paid, the interest of the mortgage - 1 Ves 575, 475 - Now
Mortg^{ee} 14-15, he then is only a trustee for Mort^g.

They consider the case when the debt is paid
as only a trustee. & if applied to they will oblige
the Mort^g to give back the title.

The mode of consideration is. That the
whole of this business is a personal contract, & the
lender is liable for the performance of the condition 2 Atk 497

The 1st thing is the security, & as soon as
the debt is made the title rests in the Mort^g

This equitable right which resides in the Mort^g after
the breach of the condition is called Equity of redemption. as we see it is only a creation of the Court of
Equity.

Nov Nov-19, 21, 28, 38

As to the ^{case} it is ^{the promise, of foreclosure is} difference whether, on the wish
or an a separate instrument

If ~~over~~ there is this condition that he
agrees to pay another sum of money at the time
to render the conveyance absolute, it is void.

(The man) but if he agrees ^{that} he should never sell
he would give as much as another it is binding
Suppose a subsequent agreement he ~~can~~ sell to
the M. & - he has right to sell ~~this~~ equity, of red-
emption to M. & as well as another.

The M. & can convey to M. & by merely releas-
ing his eqty of redemption

Case of Settlement - where a man is
about to make provision for his family - the
state chooses to ~~retain~~ ^{retain} the power of redemption
It is agreed that it shall not be redeemed
except during his life - the agreement is binding
the heirs can't claim the redemption - If the M. &
don't take the advantage himself no one can after
him, It is a question whether

Ballot Division is that they are good mortgages

This ~~title of mortgage~~ is by deed, & yet it is
defied by ^{having} proving pay of the money - Any proof
that there is no right - In the Court. Nov 53.

As soon as the estate is created there may
be the poss. - but if ~~it is~~ ^{that must be paid} to some ~~fixed~~ ^{fixed} time to
^{acquire} ~~spent~~ ^{spent} few years - but if left in poss. without
any agreement. The returns ~~papers~~ ^{papers} ~~is~~ ^{is} ~~not~~ ^{not} ~~at~~ ^{at} ~~will~~ ^{will} ~~be~~ ^{be} ~~so~~ ^{so}
By Cro J 689. Aug 28

^a A tenant who claims under a lease from the Mort^{or} granted after the Mortgage & without the privity of the Mort^{or} is liable to ejectment without notice & also to every circumstance of the Mort^{or}. Doug 22

^a In case of this lease the good between lessor & lessee, & ruled towards the good, still should the Mort^{or} say the lease shall not stand, it falls & the lessee becomes a trespasser if he remains - or Mort^{or} may take from the lessee the rents if he has not paid them to Mort^{or} & he can treat him either as his tenant or as a wrong doer.

But he ^{must} may be turned out at any time, with-
out notice - & all the Out-lying to free but he
has to wait for them - & if debt not to be obtained by
other means he can count much

But as long as Mr is poss^d he takes the rent
as to pay the interest
1st 6th 68. Pow 68 Dury 268

The Mr loses nothing for it must all be
+ accounted for, he may leave the land & the lease is good between
the lessor & lessee, the ~~Mr~~ ^{lessor} has no right to free there is no
notice req^d to turn him out - & that at
least his estate Mr can, &

Mr can redeem his Mort from any one by
paying the same p^d by 3^d party

Mr is a right doer - & can debt the little
of Mr by pay 3 money - - state Mr can sue the
lessor of Mort land for the rent due the lessor Mr
indeed the Mr can threaten this but as his own rent
or as a wrong doer. - But Mr must take the
money when he can
Pow 68-80. Dury
22, 268, 1st 6th 68.

But if he was a wrong doer - in all respects
he might cast him out - but he has no claim upon
lessor until he calls upon him

The Mr can never set up the little as any
body else is an adver 1st 6th 68, 7th 68 440 Pow
2170, 1st 6th 68 he is estopped from it by his own deed 2nd 6th 68

Mort^m living in two title & the M^r has only a chattel interest as security for payment - The Mort^{co} ~~interest differs from a~~ being the true owner real property only in that after his future it can be removed & etc.

That is real prop^y is known, that it goes to him & not to Ex^m

Whoever borrows the eq^y of a term grants him a settlement as much as for any other real prop^y.

But if nothing is set off as eq^y of a term to the mort^{co}, it passes immediately, lands tenements heredit^{ly} -
Pow 10th 2 Ves 304, 2 Burr 978 Pow 1721, Doug 810, 2 Atk 294, 3 P Wms 341.

The M^r is considered as real owner of the land if he commits waste the Lrd will ~~not~~ ^{grant} injunction Reason no man has a right to injure the security 3 Atk 723, Pow 75.

Mort^{co} & Interest

- 1st before the forfeiture, & after the creation of the Mort^{co}.
- 2^d After it is put & before the foreclosure what is the Interest

This business is all done in Chanc^y & there is consid^r as a chattel, & will so pass 1 Wth 86th & Doug 810, Pow 170, 2 Ves 821

If M^r should die after perf^m & before foreclosure his interest will go to Ex^m & not to him, if he wishes to pay the money they must go to Ex^m as much as ^many land

Dear Sir - I am very glad to hear

of the success of your journey to the
North and the many interesting
things you have seen and heard.

I am very glad to hear that you

are all well.

I am very glad to hear that you

are all well.

I am very glad to hear that you

are all well.

I am very glad to hear that you

are all well.

I am very glad to hear that you

are all well.

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are all well.

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are all well.

I am very glad to hear that you

are all well.

I am very glad to hear that you

Upon the same ground, if a in ^{unperf}
Par 288 = 215 & 4, 1 P Wms 458, 1 Equities 26810

The ^{Pl} before ^{proves} can do no act which
will ^{incur} or ^{injure} the ^{Pl} interest — but ^{if}
he can cut down ^{timber} — not unless his security is
jeopardious — 2 Ver 392 BATH 723

He may cut must but must act to
the —

allowance to be made for ^{being suffered} ^{the} ^{Pl} not to
incur the estate; — qualified — he may
charge the estate with all reasonable charges
& building houses or the like — but he
must not be extravagant; & all the charges
are to be odd'd to the original sum, & it then be-
comes principal & then as such draws interest
& all'd betterments — 3 Atk 518. 2 Vern 84.

~~And the~~ 1

If ^{the} ^{Pl} ^{is} ^{made} of an estate of which ^{the} ^{Pl} has
no title & ^{the} ^{Pl} buys it, the ^{Pl} holds
good on this land, — called graft upon the old stock

If ^{the} ^{Pl} while in ^{pos} is attainted or ^{banish'd}
not title, & he ^{defends} it — charges ^{may be} made to the
the ^{Pl} for the ^{the} 3 Atk 518 vice of defending

^{the} ^{Pl} subject to the same incidents as
^{most ex opes} ^{the} ^{Pl} when in ^{possession} of the land, but not until he goes into ^{possession} ^{Does 442}
^{possession} But if ^{he} ^{has} only the ^{rights} of ^{the} ^{Pl}, doubtful
whether it would be forfeited, when in the ^{possession} of ^{the} ^{Pl}

1891. 1892. 1893. 1894. 1895. 1896. 1897. 1898. 1899. 1900.

1891. 1892. 1893. 1894. 1895. 1896. 1897. 1898. 1899. 1900.

1891. 1892. 1893. 1894. 1895. 1896. 1897. 1898. 1899. 1900.

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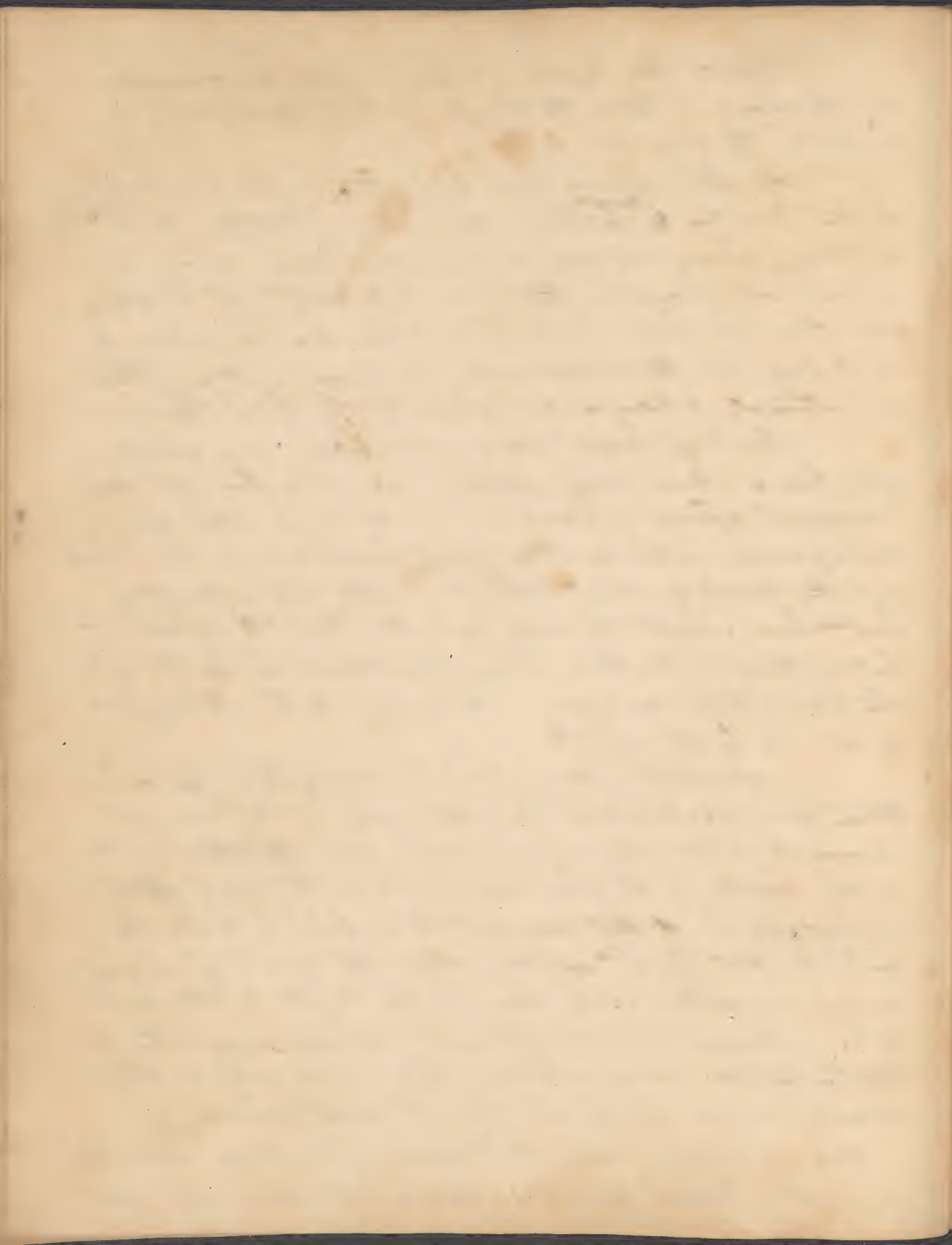
Rights of ~~the~~ persons who have a right of redemption
i.e. to redeem it from the hands of those who hold it in
right of the mortgage

The first person who holds the right of redempⁿ
is the Mort^r - he ^{Mort^r} holds in the right of trustee to ~~the~~
^{the} ~~the~~ ^{Mort^r} may redeem at any reasonable time, before he
is lawfully paying the prin & interest, if he alone
has been in possⁿ, but if M^r has been in possⁿ he
is to pay for the reasonable improvements - these
additional charges are adjusted by Ct of Chanc

But if Mort^r does not redeem, any person
who has a claim may redeem, as if he has sold eq^{ty}
of redempⁿ - assume redemptors, - or in a voluntary
conveyance - which is always fraudulent - Mort^r holds
eq^{ty} of the Mort^r - or Mort^r holds it - still this voluntary
Mort^r has a right to come eq^{ty} the Mort^r & redeem it
but if there is a bona fide purchaser he holds eq^{ty}
the voluntary conveyance. A conveys to B, B buys it
of A. C holds eq^{ty} of B

Sometimes, same land is mortgaged for several
times as B & C & D, in this case, if 1st does not
choose to redeem the second may, & so the third out
of the hands of the first &c. It is the land that
is mortgaged, at that moment B is paid & C holds the
land, so that Mort^r always holds the equity of redempⁿ
unless he sells it to C then all his right & title passes
to C. Reason, if Mort^r does not redeem any other in-
terested person may redeem, there is no reason they
should suffer because the M^r does not redeem -

Let us formerly was, that none but those who had
a direct interest should redeem, but now, even the



Espee may redeem & hold the legal title until the
mort^g pays up the mortgage money 2 Atk 526
1 Atk 506, 1 Eq^s Cas Atk 516, Pow 108, 1 Chanc l^y 1
Doug 22, 2 Ves. 304

After the death of M^r this eq^s of redemption
descends to his heir who may redeem, & this is gain
by the same laws in descent that any other real prop^y
is, so it may be devised & ^{may redeem} & I find it settled in
redemption, upon the ground that he has a lien upon
the land, Pow 109, 111, 2 Bur 978, 2 Atk 208, 1 Vern
399, 2 Atk 440, Co Lit 102.

In some U.S. by the laws the grant^r may go
& levy his execution upon the land mortg^d by M^r. & in
that case may redeem if he has been - he has
obtained an interest in the land - and is in the sit-
uation of a m^{ort} & is in fact so by opⁿ
of law, — the practice of taking land is unknown
in Eng^l but is practiced in sev^l States, & having
nothing to do with the in-law May have just priv^l

Now what is to be done in this case - is
the land to be paid of with the insurance
- or this can't be the case. — There is a long
act to settle for which the mort^g has to wait for
- it is a laborious work for the Ct of Chan to settle
much more so for the appraiser -

The course should be this.

It is out of the questⁿ for these affairs to settle & settle
all these different accounts

There is nothing to be done as the debt^r great or
small but to appraise the whole to the mort^g

^c / Verden 191.

And he becomes a ^{second} mortgage, & if the debt is but \$1000
of the land is worth 1000, now the whole of this is
land is security of the debt, & if the other mort^{gage} release
to redeem he can redeem this mort^{gage} of land

a. After the death of mort^{gage} his widow may be impleaded
so situated that she can get her dower without, ^{see 18th Nov 1911}
Dempsters for it ^{estate} might have been mort^{gage} before marriage
for if it was not mort^{gage} of man, it could not be
so in ^{incumbent} ^{that the widow could not get her dower} - but in the former case, she
may redeem if she pleases, & hold for her heirs
unless the other heirs pay her $\frac{2}{3}$ mort^{gage} money.

The Mort^{gage} may redeem the mort^{gage} of his wife after her death, by the courtesy Pow 112

1. 21. 800 Now in all these cases it remains a mort^{gage}
until it come to the last M^{ort} and any of them
may redeem, either himself, devise, heir, purchaser
or other who can claim to take

When it comes into the hands of these person
it is ~~is~~ mentioned it is irredeemable, Case in the
books. Pow 119, 1 Ch Ca 107

If mort^{gage} has released the eq^{ty} of red^{emption}, it is
good for nothing unless in writing

Resulting trust not within the Stat of frauds and
perjury - the Stat a rule of evidence of fraud,

If it happens there are diff^{erent} interests in the equity
of red^{emption}ers benefit, who holds the land, & remainder
men ^{they must contribute proportionally} ^{they} go about it peaceably but has got
out the course, ^{they} go by the fee, $\frac{1}{2}$ by best. Pow 120

But if they go to work in a peevish, - And tenant for
life wishes to redeem & Remainder men must contribute, best may hold the land
until he pays $\frac{2}{3}$ for what is due for principle & interest. Pl. 62, 44,
last author, is thought to be Pow, & requires of best $\frac{2}{3}$

25
Good Rule is that the estate of tenant for life in the premises shall be rated at $\frac{1}{4}$, that of Remainder or Reversion in fee at $\frac{1}{2}$ of price & Interest. Pl. 62.

If the Remainderman will not contribute, the tenant for life and his heirs may hold the land until the Remainderman pays $\frac{1}{2}$ purchase Price 120, Price in this 62.

It may be the Tenant does nothing, he has sufficient, tenant for life holds forever, the Remainderman wishes him to be redeemed, Remainderman demands of him to pay his $\frac{1}{2}$ or if he will not the Remainderman turns him out by virtue of the title of the Mort - which the law gives him.

If tenant for life pays off the debt & takes a conveyance of the Estate, & then the Remainderman comes to redeem he must pay $\frac{1}{2}$ of purchase price, ^{pay 2/3 of purchase price} & Interest 596, & Price 121.

As interest allowed for $\frac{1}{2}$ during life of tenant for life, for he is bound to keep interest, but $\frac{1}{2}$ of inc. they must pay him so he will return the Estate.

If Remainderman applies for redemption during the life of tenant the tenant is to pay but $\frac{1}{2}$ only.

Application is made for the redemption after the death of tenant what is to be done, — They will refer him, he having enjoyed the estate during his life, & has kept down the interest — but he must pay the principal — this rule of $\frac{1}{2}$ seems in equity — the Estate is up & divide according to equity, for he lived & enjoyed but for one year, he is not charged for $\frac{1}{2}$, for his enjoyment was not worth $\frac{1}{2}$ of fee. —

W. R. L. says of no case where tenant has been obliged to pay more than $\frac{1}{2}$ 1 Ver 301, 404

Case stands thus tenant wanted to redeem Remainderman must pay $\frac{2}{3}$, if Remainderman wants to redeem if tenant won't pay $\frac{1}{2}$ Remainderman owes him

The Equ^y of Redempⁿ is not ~~like~~ ^{reference} at Law, but it is not liable, & he does have such a thing as Eq Red. application must be made to Chanc^y, when they are over it sold, & the money being brought into Chanc^y is distributed equally among the creditors, & then at Law for it is then to be paid to creditors according to rank.
1 Vern 410, 2 P Wms 341 2 Atk 294, 2 Vern 51

If he should undertake to sell the Equ^y of Redempⁿ in the hands of purchaser, it can't be taken, Chanc^y follows the money into the hands of the heir, & demands it by decree of him.

Now with us in Conn. Eq Redempⁿ is open like any other real estate, & as such is as much to be sold, - & if there is not enough for prob. to pay the debts it is sold, by ex^{or} - This eq Red is desirable - & may be devised for payment of debts, & if person is not ready to pay all it - it must go to Chanc^y. 2 P Wms 412, 2 Atk 50, 1 Vern 410, 2 Lal 354.

Rule. A Real prop^y is devised to be sold for the payment of debts, - when sold, must it be applied to the payment of those debts, ^{must it} noticed ex^{or} ^{or} ^{equitable} ^{person} ^{asset}, & as much divided among all the creditors of decisor, - Now you may go to Chanc^y. A ~~they~~ ^{it} will drive the sale & then they instantly ^{become} equitable assets.
Rule. If it is case of such nature, that he would not sell the land for prob. - & we are obliged to go to Chanc^y then equitable assets, if not - not
1 Equ^y Cas 371, 1 Vern 53, 101, 1 Mod 117.

Disputed whether there could be possession fratris of an
Eq. Red. That is when a man dies and one cannot inherit unless
he had been seized, & no one shall become heir unless the
the person seized,

Rule there must be a seizure now, - & there must
be something next to an abandonment, to exclude the direct heir
Eq. If a man had a son & daughter by one wife & afterwards has a
another son by a second wife, & the eldest son dies seized, the
estate descends to the daughter in exclusion to the second son
(of half blood) This called "possession fratris," But if the eldest brother had
never been seized, it ~~the~~ estate would have descended to the
second son, in right of his father because all descents are from
the person last seized, Ex. a man died leaving an equity of redemption
to his eldest son, - In. Now in this case of Eq. Redemp. if the eld.
son died seized would the daughter take - Current of author.
It is set in her favour. 1 Cal 804, Co Lit 142, 1 Co 124, Pow 98
132, 1 Atk 604-5, - (2 R. 213 Possessio fratris there defined)

S. That no person is allowed in Eq. to redeem who has not
a title to the legal estate - This is not strictly correct. But no one is
allowed to redeem who has not some interest in the estate. 2 Eq. ca. ab. 605,
Vern. 182 Pow. M. 132. Ex. Wife. Assignees of Bankrupt, if the majority of
cred. will allow them to redeem - if not, any other cred. may redeem.
2 Vent. 350. So where persons specifically interested

Ex. do not consider themselves bound of course to allow every
one to redeem, who has an Eq. of redⁿ - He who seeks eq. must
do Eq. Ex. Where one has made two mortgages of his land to one
person - one security ~~was~~ defective the other not - Mortgagor wishes
to redeem (2 Vern. 526) the good, but ch. will not allow him to redeem
that without he will redeem the other also. The heir of Mortgagor
must do the same. And sometimes heir is bound to do more than the

My dear Mr. [Name] I have the honor to acknowledge the receipt of your letter of the 10th inst. in relation to the [subject] and in reply to inform you that the same has been forwarded to the proper authorities for their consideration. I am, Sir, very respectfully,
Yours, [Name]

I am, Sir, very respectfully,
Yours, [Name]

ancestor would be. Wern. 245. Pow. 140. And in every case where the mortgagor comes into Ct. to obtain Eq. he must do Eq. before Ch. will allow grant him relief.

A mortg^d land to B. & B has sold it to C. - A has also mortg^d the same land to D. - D can compel C. to deed it to him for the sum that C. gave B. whether he gave more or less than it was mortg^d to B for. But this rule does not hold as between A and C. - Here A must pay the full sum p^d by B. to him. Wern. 476. 1 Gal. 155. 2 Vent. 353. Wern. 49-336. 1 Eq. ca. ab. 330. 2 Attk. 54.

If the mortgagor heir buys in the incumbrance to protect it one to which he is entitled, the ~~the~~ whole money shall be allowed - tho he purchased it for less. Ex. B. mortgagor's heir buys one mortgage & ~~the~~ Pow. 145. Wern. 49.

The mortgagor mortg^d his prop^y for \$100. - he afterward becomes indebted to mortgagee in a further sum - Eq. will never allow, Mor to redeem without he pays the other Contracts. Lues if mortgagee applies to foreclose the eq^y of red^m. 9 Vis. Jr. . Wern. 46. 244. 2 Eq. ca. ab. 600. Pow. 143. 526. So if mortgagor's heir comes to redeem - with this difference, that he is not bound to pay any debts wh. he is liable to pay as heir. 1 P. W. 725. 1 Vis. 87.

Suppose there are sev^l mortgages - (4 to B. C. & D. -) - and B. has a bond debt - C can redeem (2 Attk. 52. 3 Gal. 240. 44. 3 Attk. 558) of B. by paying the money for wh. the land was mortg^d - not the bond debt.

From the above rule we may collect, that in the U. S. - the heir will not be obliged to pay, on petition to redeem, any debts except such as he ~~is~~ would be obliged to pay as heir. And if as heir he is not obliged to pay any of his ancestors debts - then he will not be compelled to pay them when he redeems.

The debt may sometimes be for more than the sum ~~but~~ ^{mortgage penalty} ~~as where the interest exceeds the principal~~ ^{exceed the mortgage penalty} in such case Ch. will not allow mortg^{or} to redeem unless he will pay the sum due in Eq^y - But if mortg^{ee} comes to foreclose it is otherwise - *siml. Pow. 146-7. Tal. 154.*

There are some cas^s where the first mortg^{ee} (there being more than one) will be postponed to the 2^d. - & where the first has practised a fraud on 2^d. - by allowing ~~the~~ him to lend money to on the same security without informing him that he has a mortg^{ee} on the land.

The purchaser of an Eq^y of Red^m is not obliged to pay a bond debt or any other ~~the~~ (wh. mortg^{or} owes to mortg^{ee} - except such as are *Pr. Ch. 49. 511. 2 Str. 1107. 1 Ves. 87. 2 Ves. 662.* Secured by the mortgage.

Length of possⁿ will sometimes bar a right of red^m. will sometimes bar a right of Red^m by mortg^{or}. 20 Years possⁿ by the mortg^{ee} raises the presumption that the mortg^{ee} has been settled & mortg^{ee} has a right to the land. But this presumptⁿ may be rebutted. If mortg^{or} has always been in possⁿ, no length of time will bar his right of red^m. *2 Eq. ca. ab. 576. 2 Atk. 339. 2 Vern. 418. Pow. 144. or 244. Pow. 150. 161. 3 P. W. 287.* If any fraud has been practised upon mortg^{or} to prevent his redeeming, no length of time whatever will bar his right of Red^m.

There are some cases where Ch. will not allow mortg^{or} to redeem, tho' there was no ev^d. that the mortgage had been settled. & long afterwards. & where the premises mortg^d when the deed was given, was not worth the money advanced, but afterwards became valuable -

There are a kind of mortg^d, called welch mortg^s, where money is loaned on a security without any day given payment - but where mortg^{or} has always a right to redeem. In such mortg^s there can be no Eq^y of Red^m - for mortg^{ee} may always redeem.

It has been held where a mortgage (or witness to the deed) is enquired of by one who is about to lend money on the same security that he is obliged to disclose — and that if he does not, his mortgage shall be postponed. —

Devise of Mortgaged Lands

Mortgage int^t. is devisable — and devisee stands in the place of mortgagee. (Ch.R.32) and has the same right to foreclose.

Some of the older writers consid^d. a mortgage as real prop^y — so that when it was ~~made~~ forfeited there could be dower in it. — It is under the words "all my mortgages" only an est for life passed. But now under these words all mortgages est^t. will pass.

On the other hand mortgages (2 Vern 621. 1 St. 3. 2 Vent. 351.) int^t. will not pass by any other words than w^d. convey real estate. But ^{the} mortgagee's int^t. will not regularly pass (2 Eq. 221. ab. 666. Barnadiston. 457. by such words as these "all my land" — "all my real est^t!" — yet if mortgagee has no land except these, they will pass.

It is that where there is a devise to mortgagee of the money due on a mortgage, it does not carry the int^t. due at the time of mortgagee's death. This cannot be correct says Reeve — where the bond on w^h. the money is due, draws interest. True if one having a bond of 400[£] principal & 100[£] int^t. at the time of devise (Barnadist. 229. 2 Atk. 113.) made, only 400[£] will pass; for here it is evident no more than 400[£] is meant to be devised.

Has been (Earth. 79. 41. 35. 2 Bur. 978.) questioned whether ~~and~~ whether mortgagee's int^t. will pass under a devise not attested accord^g. to the St. Frauds. — Sent, it will — never expressly decided. (How. 68. 49. —

3 Mod 260

Dear Sir,
I have the honor to acknowledge the receipt of your letter of the 10th inst. in relation to the matter of the
and in reply to inform you that the same has been forwarded to the proper authorities for their consideration.

I am, Sir, very respectfully,
Yours very truly,
J. M. Smith
The undersigned is a member of the Board of Directors of the
and in his capacity as such, he has the honor to inform you that the same has been forwarded to the proper authorities for their consideration.
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Yours very truly,
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Tacking Incumbrances

A has mortgaged his Est^e. to B and afterward to C.

Q. H. Have I may purchase B's mortgage and by this means secure his own debt ~~by tacking~~ By tacking B's mortgage to his he has a right to hold the land agt. C. till both his mortgages are paid. The principal is that he who has the legal title and equitable one shall be preferred to him who has only the equitable ~~one~~ title or right.

But this rule is subject to some exceptions; for if the subseq^t. incumbrancer has notice when he lends the money of the prior mortgage, he cannot tack his ~~prior to a sub~~ subseq^t. mortgage to a prior one.

This opens a question that is very important in the U. S. for in some of the States it is the law that mortgages shall be recorded - Where this is the case it is a question whether this recording the deed is not constructive notice agt. all the world. If it is so, I suppose there can be no such thing here as tacking mortgages. 1 Bro. & La. 58, Pow 189, 2 Vern, 524, 1 Eq. Ca. Ab. 142, 2 Ves 447, 2 Ves 570, 1 Str 240

Every man's right is according to the date of his deed (2 Ves. 570) - Maxim. "Prior in tempore potior est in jure". - But this priority may be lost in some cases; as where the prior mortgage has been guilty of fraud - E. Being present when his mortg^{or} mortgages to a 2^d without giving notice of his lien. So too in many cases where first mortgage has been guilty of neglect - As by neglecting to take the title deeds. So said in 1 Ves. 6. where first mortgage is witness to the 2^d. mortgage deed; for it is so he must know the contents. But siml. if it does not appear that he did know the contents, he is not postponed.

2 Vern. 554 or 564.
1 Ves. 6.
1 W. 755. 763.
4 Vern. 370
2 Atk. 49
1 P. W. 373.
1 Ves. 360
3 P. W. 286

Where there are several equities that are equal the legal title will prevail. So that any bonafide subseqt. incumbrancer. (2 Ves. 574. 2 Vent. 339. 1 Vern. 178. Pr. Ch. 226.) may always tack his claim to a prior mortgage or to any other incumbrance that carries the legal title. ^{same 187.}

If the prior incumbrance attaches only on a part of the land that the subseqt. mortg^e - tacking that to a subseqt. one will not prefer the last to an intervening one than as far as the first goes. Ex. A Mortg^e to B. 20 acres and to ~~B & C~~ C & D the same of 40 acres. D purchases of B the mortg^e of 20 acres, and prefers his mortg^e to C's only as to the 20 acres. 2 Vent. 289. 17 R. 773.

But if the first (1 R. W. 295.) 1 Eq. ca. ab. 323. Pow. 212) covers more than the two others & he who purch^d. that will hold till both mortg^es are paid - it covers all.

B. Purchasing in a satisfied incumbrance will cover a subseqt. one, and prefer it to an intervening one. For the legal title is thereby acquired. There as to the principal - for the right purchased is merely nominal. ~~Equity~~ It has been holden that if he gets the legal title without paying (2 Vern. 279. 2 Ves. 156. 1 Ves. 52.) any considⁿ for it. Pow. 215. 1 Eq. ca. ab.

When the prior incumbrance is defective & wants the legal requisites, it gives no priority. Pow.) The mortg^e may tack the legal title let him find it now he will - But no other. (2 R. W. 491. 2 Ves. 662. 1 Eq. ca. ab. 325. 2 Atk. 347.) person can tack. Ex. a bond cred. or judgt. cred. The mortg^e must be forfeited.

So also may a prior incumbrancer hav^g the legal est. advance new sums of money & protect them by his mortg^e - But to enable him to do this he must be ignorant of the intervening incumbrances. He must do it bona fide.

A defective mortgage may be enforced in a Ct. of Eq. if
enforced — they only having a genl. lien on the land (not a specific one)
for they ~~did~~ advanced the money on the persl. security of their
debtor not on the credit of the land.

If A mortgages to B by a good title. Whichever a man has not
by legal diligence secured to himself a good title — tho you know
he means to get one, you may secure to your self your own debt
by purchasing in a good one.

So if a first mortgagor has a defective title & the 2^d. lends his
money knowing of this, he may avail himself of it: for he does
not make the title of the first worse than it was, but only gets a
good one to himself.

A defective mortgage (1 Eq. ca. 320. Pow. 215. 232. 234. 1 P.W. 1791.
2 Vern. 564. 1 Sal. 449.) will be enforced in Chy. if a Ct. Creditors who have
only a genl. lien

If one gives a mortgage ~~in~~ that has a clause in it, sec for the
security of subseqt. loans, this is good. But In. If the 2^d. &
same land is mortg'd to a 2^d. & 3^d. would they be bound by these
subseqt. loans? If the 2^d. & 3^d. mortgage had notice of such a clause
he will be bound by it — Secus if he had not notice. 1 Ves. 56. Pow. 254.
If in a Ct. of Ch. the plff charges the subseqt. mortgages with having
notice, they must deny having either genl. or special notice, else
he will be bound by this clause — And even then if there be other
evidence to show he had notice. 2 Ves 450, Pow 254, 57, 1 Ves, 97, 2 Atk
19, 141, Cha 52.

My dear Mr. [illegible] I have just received your letter of the 10th inst. and am glad to hear from you. I am well and hope these few lines will find you the same.

I have not much news to write at present. I am still in the same place and doing the same work. I have not much time to spare for anything else at present. I am sorry to hear that you are not well. I hope you will soon be better.

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Notice

Interest of Mortgagee or

The first ideas entered into on this subject was, that mortgagee must pay the money on mortgagee's death, must pay the money to mortgagee's heir - not to his ex^r.

But now the money must be p^d to mortgagee's ex^r and not to the heir; for it is pers^l prop^y and assets in the hands of ex^r. -

Issues -

If the court be to pay the money to mortgagee's heir or ex^r - then mortgagee may pay to heir or ex^r at his election. (Eq. ca. ab. 326. - This is accord^g to the terms of the contract. But in this case if the money is not paid till after forfeiture, Ch. will compel payment to ex^r. - When the money is p^d to the heir, it is accord^g to the terms of the contract - it must be p^d over by him to the ex^r; for in this ca. the heir is not the owner but the trustee of the property money.

Pow. 302.
2 Vent. 348.
H. 351.

We have two funds to pay debts personal in Ex^r hands & real in the hands of the heir, the money but in mortgage was once personal property & it was not intended to purchase land

Wherever the equity is purchased or the mortgage is foreclosed it goes to the heir (2 Vent 348) Hard, 467, 1 Chan ca 273, Pow, 299, 301,

Suppose the mortgagee pays it to the Ex^r by the day, the heir will convey or will be compelled to reconvey the security. - That the heir must pay over the money if paid to him see, (Pow 302, 2 Vent 348, 351) - If no Ex^r it must be paid to admin^r. but if the money is not p^d by mortgagee the heir of mortgagee must ^{convey} ~~pay~~ it to Admin^r even if there are no debts to be distributed as Chattels (Des 170, Eq. Ca. 328)

Suppose the Mortgages release the equity to the heir the Personal Representative will have the Mortgage Interest. (2 Vern 193, 1 Vern 41, 170.) But the ^{whole} Est does not go to the Representative as Powell inconsistently says. If the Mort is foreclosed, the Personal Representative will be entitled to the Money.

If the Mort^{ee} had taken possession it would have descended to the heir - If there had been a foreclosure (2 Vern 193, 1 Vern 41, 170) and even if the equity had been foreclosed run out by the limitations - if the Mort^{ee} had not taken possession it would still be personal prop^y & go to the Ex^{or}. - A Mort^{ee} to B & B sells to C. A may redeem of C, but if C dies in possession the land as real estate goes to his heir, for he bought it as real property. (1 Vern 271) & evidently considered it as such.

If Mort^{ee} derives the lands as real estate, the devise takes it as real estate which goes to the heir 2 Bur. 969. 2 Vern 581, One Ch 285.

The Mort^{ee} intention has no effect upon Mort^{or} or any one claiming under him, but merely upon Mort^{ee} representatives.

If money secured by Mort is articulated to be laid out in lands & settled in any particular manner - it is bound by the articles and goes as the land would have gone - for ex^{or} considers that as done which ought to be done 3 OMR 14.

Where joint tenancy prevails the case of Mort^{or} is different. Joint Mort^{or} are not joint Personal Chattels - the jus accensendi does not take place - They are tenants after in common after foreclosure 2 Ves 258, 1 Atk 467, 2 Atk 55, 3 Atk 783 1 Ves 15, 3 OMR 258.

Interest of Mortgagee's Wife

When a man would dispose of his lands his wife must join with him in the conveyance or he would have her Dower. So if a

Mort. is made by husband alone the right of dower is paramount to that of the Mort. But if the wife joins in the Mort she has no more right than any person interested in the Mort. 1 Vern 294, 277.

A man has Mort & after at Marriage he makes a jointure, the Mort is not affected by the jointure - The wife may take dower & redeem the Mort. If she redeems she will hold it. - but if she joins in the Mort. she would have lost her proportion i. e. 1 Ch Ca 281, 1 Vern 213, 2 Ba 228 - This rule does not hold, if the jointure was not an actual executory & not executed by deeds of settlement, & the Mort was given after this case 1 Vent 249, 1 Vern 191, Bur 917, 1 Eq. Ca. 318

So if after marriage she joins in a fine to Mort she must pay her proportion i. e. 13, & if she does not redeem she must keep down Mort. If there be no jointure he may take an after contracted debt. 1 Ch Ca 119, Bro 315

If a husband before marriage enters into bonds to leave his wife a sum of money on his death, & he dies, not leaving the legacy. - The judges considered the bond good as to his Ex^r; & being a contingent Bond until his death, & if he becomes bankrupt, a bond is given to his wife, & if he dies it survives to her 2 PM 497-87 2 Co 94.

A settlement of Mort premises made after marriage if merely voluntary is void as to second Mort even although he has notice thereof. Pow 315, see 2 Wms 363-4.

If hus. takes a Mort in the name of himself & wife, & he dies first she is entitled to the land. - If there were debts besides to pay the debts - the same as if he wanted to convey it to his wife & know she would hold it after his death - and it is a good conveyance except as to creditors. 2 PM 384-5, 2 Vern 180 10 Co 94, - The Mort made the Mort before marriage & the wife comes only to be endowed in the equity - she cannot be thus endowed 1 Atk 661, 3 PM 329, Cal 194, 2 Atk 525, - contra 1 PM 700, 8 Ch 147 is of a mortgage in fee. For an Equity is considered as a trust estate of which a widow cannot be endowed - But in law, a widow may be endowed of an equity of redemption. & In Eng. a hus. may have custody of

of his wife's Mortg^t & a widow may be endowed in the reversion & contingent in
determination of the estate or term work for the termination of the time reverts
the estate at law In Ch 133, 2 Vern 405

Mortg. of her Freehold Estates by Husband & Wife

The hus. is by law entitled to the wife's freehold estates only during
coverture. - And he has issue by her, by courtesy after her death, Pow. 937

But if the wife joins with him, the sale becomes absolute, & under the
usual principle she can mortg. with him - indeed she can bind herself &
her heirs forever if the hus. does not disagree to it - 2 PM 127, Fol Ca 41, 1 Vern 81
Eq. Ca. Ab. 367, 1 Roll 375. At Law 265.

But a covenant by hus. & wife, that they will levy a fine, will not bind
in case of his death - it being a max. of law, that a feme covert cannot be bound
without fine Pow 939, 1 Eq. Ca. Ab. 812, 2 PM 127-87

If the wife joins in the fine without reserving expressly her right of Redemption^r
she does not part with her est. absolutely - for there is a resulting trust, for her to
have her est. when the incumbent is paid off. Pow 946, 2 Ch Ca 187, 2 Atk 244, 1 Vern 210

If the wife separately or with her hus. conveys away her lands in a man-
ner that does not bind her, & after his death she confirms it - it is called a redelivery
& is good. of course a court respecting her lands is not void but voidable. For, 85
Peak 154, 2 PM 127, 2 Vern 226, Cowp. 201.

If wife with hus. makes a lease of her lands & after his death she renews
rent the lease is good - this being a redelivery. 2 PM 128?

If wife joins in a mortg. with hus. & it is forfeited & the mortg. lends
more money upon the same security except the wife will it will tack.
Pow 342, 1 Vern 41, The mortg. has here the legal title but not as much
equity as the wife certainly.

If the wife's land is mortg. to secure the hus. Debt, altho' she levied a fine
his personal property shall be first applied in discharge of them - The
mortg. being originally the debt of the hus., the wife by consenting to
charge the lands with ~~the~~ it does not make it less so. than it was before
2 Vern 339, 304, Pow 343, 1 PM 264

24th 209
30th 764

The principle upon which the Ct have decided is, that the mort^e has by the mort. the legal title & also as much equity as the wife or her has to be restored to the property - & where the equity is equal the legal title will prevail

If a feme sole becomes a mort^e & marries & the hus. makes a settl^m in consideration of her portion, it will be a purchase & all the choses will go to the husband. Pow. 349, 352, 2 Eq. Ca. 58. 2 Vern 501. And if she dies it will go to him, & if he dies first it goes to his Rep.^r & not survive to her

In case of a Vol^t settl^m after mar^e? L^d Hardwicke says it would not be a purchase the wife being unable to contract. But (says Judge R.) what if she should take this settl^m, will it not have the same effect as a jointure after mar^e? If she took it I should think it would bind her Pow 349, 350, 2 Atk 444

(68) If a settl^m be made upon the wife before mar^e but in considⁿ of part of her fortune only it will do away the gen^l presumption that it is in consideration of the whole & in such case it is apprehended, that what is not specially conveyed to the husband will survive to the wife (Atk 69, Pow 350 Eq. Ca. 58 70.) When the settl^m is thus made or consent^d to be made. if the wife dies first the portions thus settl^d will go to him, if he dies it will go to his Ex^r. (Pow 351) If the wife dies before settl^m but after consent^d for it, it will ent^l to a purchase^r & then will force him to make the settl^m upon her heirs. P. Ch. 312, 2 Eq. Ca. 70, Pow 351 352, 2 Vern 52.

If the hus. cred^r get possⁿ of the wife's mort^e. & so indeed if the wife or her trustees have or get the possⁿ of it little deeds. The Ct of Ch will not interfere, so as to take possⁿ either by any Eq^d title which she or they may have acquired (Pow 348, 350 197. - But if the hus. will make me reasonable par^t to his, the Ct will interfere, & W^g thinks bankrupt Cred^r will have the same right 1 PW 342, 459.

Althoth Ct of Eq. will not interfere ag^t the wife in favor of this app^{ee} yet it will in favor of a specific app^{ee} of mort. by the hus. for a real considⁿ. It will not inter^f in favor of Cred^rs who have only a gen^l lien upon the ^{land} land, but only in f^r of those who have a specific lien 2 Atk 270

(69) A more spec^l agreement by the hus. to app^{ee} for a real considⁿ of wife's mort^e as security for a debt with a deliv^y of deeds, binds the mort^e for 100 years. - the residue belongs to wife as her share on acc^t



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If a settlement be made to the wife by hus? it amounts to a purch.
of her fortune. If she dies first it goes to hus? - if he dies first, it goes to
his heirs.

In the principle see pag. last (A)

Pr. Ch. 312.

Eq. ca. ab. 70.

Pow. 354-2.

2 Vern. 68.

Sometimes a settlement is made as a specific worth. - If in
this case it proves not to be worth so much, it is not a purch.
of her fortune. 1 Eq. ca. ab. 88. - Yet the wife shall have the settlement.
It must be remembered that the Wife's mortg^e stands on
the same footing as her other choses - When he reduces it to possⁿ it is absolutely his. - He may alienate it for a
valuable consid^r. Pr. Ch. 118.
2 Vern. 170

Out of What fund are Mortg^es to be Redeemed.

This subject is of consequence in Eng. But it is not
of any in the U. S. for the pers^l & real prop^y here stand
on the same footing as to paym^t of debts.

The Rule is that the mortg^e must be redeemed
out of the same fund as that has been benefited by it.
If the pers^l fund has been benefited, it must be redeemed out of Sal. 449.
that - if the real, then that must be redeemed applied for the Talb. 54.
redempⁿ of it. - The ex^{or} is compellable in Ch. to advance Pr. Ch. 61.
the money. 3 P. W. 358.

Suppose the mortg^e sh^d. be the mortg^{or}'s heir on the
bond - The heir may on applicatⁿ to Ch. to compel the ex^{or} to
advance the money for redⁿ. - For the heir is not entitled to
the land sine onere.

But if the testator intend that the mortg^e shall
be redeemed out of the real fund, then the mortg^e must be re-
deemed out of that. Any deedⁿ of Testator that shows that

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He intends the ^{or devise} heir shall take the land cum onere - will oblige the heir to take it so - and in such ca. the ex^r. is freed from redeeming. 1 Ves. 57. 2 Vern. 718. 1 Ch. ca. 457.

It is determined, that notwithstanding (1 Eq. ca. ab. 298. P.W. 127.) the genl. Rule, the heir or devise is not entitled to testators pers^l. property when his intention is otherwise.

Genl. Rule - Mortg^s as well as other cont^s, are usurious and void when more than legal int^t. - The man who reserves & receives too much destroys his security - it is void. But if he does not reserve too much, but receives too much, he does not loose his security, ~~his~~ it is not void - but he subjects himself to a penalty. If he reserves & receives too much, he loses his security and also subjects himself to a penalty.

If a mortgage be made for five per cent & mortgagee receives six per cent the mortgage is void, says Ed. Hardwick. This is not correct (3 Atk. 104) unless the 6 per cent be given in pursuance of a private agreement made at the time mortgage is given.

If land is mortg^d with agt. to pay 5 percent. with a clause of reduction to 4, in case of punctual payment, this is good and will be enforced. Since if mortgage be at 4 per cent with agt. to pay 5 in default of punctual payment, this Ch. will not enforce - in the nature of a penalty say Chy. Pow. 452. Pr. Ch. 161. 2 Vern. 134. P.W. 662. 3 Bro. P.C. 68.

Neither a Ct. of Ch. or law will enforce a cont^t. to Pr. Ch. 116.
pay compound int^t. - Oppressive. Qu. Is it oppressive? - Every man 2 Atk. 331.
has a right to receive his int^t. yearly. P.W. 662.

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111

A Ct. of Ch. always direct simple int. to be calculated on the mortgage. In some cases the int. may become principal &c. Where Mortgage with concurrence of mortg'or assigns the mortgage. So when an Account by Master in ^{is taken} in Chancery. When mortg'or does not agree to the assignment of the mortgage he pays no more than the simple interest on the money loaned. When he does agree, to assignment, the int. due at the assignment. (Eq. ca. ab. 129) will not be made principal, unless the assignment be bona fide - Clear of fraud. Where a foreclosure is decreed unless the mortg'or pay by such a time, int. will accrue on (2 Vern. 135. Pr. Ch. 116. 500. Pow. 429. 1 P.W. 478. 453. 376.) what is due when decree was made.
Exception in Case of int. debt. 1 Vern. Id. R.

Compound int. was formerly allowed by Ch. on a mortgage - This doctrine now exploded - ^{except in} some particular cases where a great adv. is acquired by it. 1 Eq. ca. ab. 287.

The Tender of money by mortg'or after day of paymt. has no effect in a Ct. of Law. - Issues in Eq. - There mortgage can have no int. after the tender. But in such cases 3 Atk. 90. the tender ~~sum~~ ^{debt} due for wh. tender is made must be known, not an unliquidated debt. In case of tender at sup. the mortg'or must make oath that he has always had the money ready for mortgagee since tender made. 2 P.W. 378. 2 Ves. 678.

Has been S^d that tender of Bank-note is good. But there is no case that warrants this position. 1 Eq. ca. ab. 365. Pow. 1 Ves.

There is no difference in law between tender to mortgagee and any other person. Some seem to think otherwise. 2 P.W. 374. The tender may be made to mortgagee's person whenever he can be found. The debt is personal.

42

Eg. will consider a tender made where the sum is certain, as having the effect to stop interest from the time it is made. Yet mortgage will be allowed sufft. time to clear any ^{Eg. as ab. 573.} doubts he may have.
3atk.90

It. that int. on a mortgage may be altered by a parol agt. - This gives an incorrect idea - But a parol agt. may be of such kind that Ch. will not lend its aid to carry the written into effect - Will leave mortg. obligee to his remedy at law.

Method of Accounting.

When A mortgages to B & continues in poss. there can be no acct. - Mortgagee is not bound to account for rents & profits. But mortgagee may get poss., and mortgagee is then obliged to acct. with mortg. for the profits - they first go to stop int. and if any remain, they go to sink the principal. Mortgagee must be allowed for all his improvements and labor - Only obliged to acct. for clear profits he has or might acquire. If mortgagee lets the land, then the rent is the rule - if it be a bona fide transaction. When mortgagee hires a bailiff to oversee the estate, he is allowed his expense in hiring him - Unless if he oversees himself. Wern. 316. 3atk. 518. 2 H. 574 120.

When mortgagee has aliened his mortgage, mortg. must redeem of assignee - But sometimes a bill is also brot agt. mortgagee; for mortgagee may have to acct. for some of the rents & profits. If mortgagee assigns to a bankrupt, mortg. is also allowed for the profits - Mortgagee sh^d. have assigned to one solvent - Not mortgors fault. Mortgagee is not always obliged to ~~pay~~ account for

all he might (1 Vern. 45. Eq. ca. at. 328. 1 Vern. 476. 2 Ch. ca. 3.) have received under all circumstances — Genl. Rule is that he must account for all he did receive — if no fraud has been practised or gross negligence. But the rule is more strict when a subseq^t. incumbrancer redeems. (1 Vern 270. R. Ch. 30. Pow. 468.) He must then acc^t. for all he might have reasonably have received — Common prudence ^{at least} requiring. The mortg^r must always pay to the second incumbrancer what he p^d. to redeem —

When first mortg^r will not take possⁿ. (on request of the 2^d. + and he will not allow 2^d. to enter, the 2^d. may redeem if he pleases, and the 1st. mortg^r must acc^t. to 2^d. for all the profits mortg^r has rec^d. while in possⁿ. after the mortg^r. But A must pay B if he is able, for what A & what B has lost by A's remaining in possⁿ. 1 Vern. 367. 3 Bae. 658.

Where there are sev^l. mortg^{es} and there has been an acc^t. between first & mortg^r, the others are bound by the amount, unless there has been fraud or mistake in accounting.

But when mortg^r sells to assignee & they make an acc^t. the 2^d mortg^r is not bound by this unless he agreed to the acc^t. at the time. 1 Ch. ca. 68. Pow. 472. —

2 Vern. 536. Mortg^r is allowed for all he has expended in defending his mortg^{ed} ag^t. mortg^r at law: when mortg^r has endeavored to defeat the mortg^e & failed.

There are two modes of acc^t.g — 1st By Annual acc^t. of rents & profits. 2^d By bringing the rents & profits for the whole time and reckoning the int^t. to that time & adding it to the principal — Then subtracting the former from the latter.

44

Rule of casting intt. - Cast it to the first payment and subtract the payment from the principal and intt. - then cast the intt. upon what remains up to the next payment, if the first paymt. amt. to ~~as~~ much or more than the intt. then due, But if it be not so much as the intt. due at the time, cast the intt. on the origt. debt ~~from~~ for the whole time again ~~and add from the first to the 2^d paymt.~~ & add the surplus of intt. due ~~at~~ ^{after} last paymt. and subtract the 2^d paymt. from the aggregate sum - and so on.

The principal that mortggs are a chattel intt. produces this effect - that if mortgagor sells his mortgage when out of poss. and another is, in claiming, he is not liable to any penalty - (But it would be otherwise if it was considered real property.) Same rule if he has agreed to convey, but another gets in poss. & sets up an opposite claim, before he has conveyed.

Foreclosure.

It was thought unreasonable that mortgagor shd. have this incumbrance upon the land when he would not redeem. Ch. has therefore allows mortgagee to foreclose mortgagor's right, after reasonable time given to mortgagor to redeem. a decree of foreclosure is not presumptive but conditional 2 Am 198.

Foreclosure has the effect to turn mortgagee's right into real propy, if after foreclosure he takes poss. of the land. But if he does not take poss. it does not always have that effect.

There are some cases where foreclosure may be opened in favor of mortgagor - If mortgagee sues on the bond after foreclosure, that opens the foreclosure. It may be opened by Petitions.

The following is a list of the names of the persons who have been admitted to the office of the Secretary of the Board of Education, since the last meeting of the Board, on the 1st of January, 1870. The names are given in alphabetical order, and are followed by the date of their admission, and the name of the person to whom they were appointed.

Mr. J. H. Smith, Secretary of the Board of Education, was appointed on the 1st of January, 1870, and was succeeded by Mr. J. H. Smith, who was appointed on the 1st of January, 1871.

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Mr. J. H. Smith, Secretary of the Board of Education, was appointed on the 1st of January, 1873, and was succeeded by Mr. J. H. Smith, who was appointed on the 1st of January, 1874.

46
It is a com^{mon} thing in Eng. for mortgor to mortg^{or}. the
reversion of his land. In such case mortg^{ee} applies for a de-
cre^e of sale instead of a foreclosure - and in this Ch. will gen^{erally}
do. Pow 475. The loan is a prior incumbrance.

Every person who has a specific lien on the prop^{erty}
must be summoned in on a petition for foreclosure. 1 Bro
Ch. 368. 2 Vent. 365. 1 Vern. 232. If all are not summoned
in, only those who are will be foreclosed.

But that mortgor can never controvert mortg^{ee}'s
title on a bill for foreclosure - But this does not hold when
mortg^{ee} has disposed of his claim, and thereby ~~transfers~~ another
person has a right of foreclosure. Pow. 476. 2 Ch. ca. 244. -
Mortgor can never deny that he had no title when he
conveyed to mortg^{ee} -

Mortg^{ee} may pursue all his remedies at the same time. 2 Atk 341. & sue on his bond - Bring
equity and prefer a bill for foreclosure - at the same time.
And in those states where land are sold under Ex^{ecutor's} for payment
of debts, he may attach & sell the Eq^{uities} of Red^{emption}. or even buy in
those states where Ex^{ecutor's} are not used, sell the land at the Court by apply^{ing} to Ch.

Granting foreclosure is not matter of course in
all cases - as where there is a great disparity between
the mortg^{ee} & the value of the land. 2 Vern. 271, Sal. 620

When Ch. have set a time to redeem and mortgor
does not redeem within that time, Ch. will make the
foreclosure absolute. 2 Atk 287.

If it appears (Pow. 479.) that the pers^{on} rep^{resented} is
not made a party to the bill for foreclosure, the bill
is open to dem^{ur}. and even if there be no dem^{ur}. the
bill cannot proceed - must be dismissed. 2 Vern. 66. 1 Vern. 367.

(a) A devise may bring a life to recover, when the equity is all
devoted without the heir.

(c) The Mortgagor will answer up as many subsequent incum-
brances as he joins in the bill. 2 Vern 518, 145, 688.

115

But if the heir (2 Vern. 93. 2 Eq. ca. ab. 608.) does ~~foreclose~~ ^{foreclose},
he may be compelled to pay the mortgage money to ~~ext.~~ ^{ext.} or
to deed the land to ~~ext.~~ ^{ext.} The mortgage is void.

But it is not necessary to make mortgage ~~ext.~~
a party to the bill. when the mortgage himself comes forward
to foreclose. Rule in 28 Wms 993 note.

By months in a decree of foreclosure is
meant ~~lunar~~ calendar, not lunar, months. Thus in *St. Paul*.

When the heir moves a release of eq of Red. & Eq of M^{or} are to have benefit of Mort. 29 Wms 993
(a) 2 Eq. ca. ab. 608

An Infant may be foreclosed — but he always
has a day given him (i.e. 6 months) after he is of age
to show cause why he sh^d. not be foreclosed. And if he
can show any suff^t. reason, that existed at the time of
foreclosure, why he sh^d. not be foreclosed; it will be opened.

Pr. Ch. 194, 2 Vern. 942, 992, 2 Wms 23, 2 B.W. 1101, Pow 1189, 3 P.W. 352, 1 D. 504, 2 Atk 502

If mortgage has been guilty of fraud in foreclosing,
the foreclosure will be opened. 1 Mod 153, 1 Eq. ca. ab. 604, 609, Vinces 478.

If a Judt lind finds money to redeem, but the appt of forecl will be opened 2 D. 507

If he forecloses mortgage without noticing in the
subseq^t. incumbrances, the (2 Vern. 185.) latter must pay all the
expense of foreclosure when he comes to redeem.

Ch. will frequently enlarge the the time they
have limited for mortgage (1 Eq. ca. ab. 685) to redeem — when
there appears to be any hardship.

Ch. (Vis. 406. Pr. Ch. 403. 1 R.W. 291.) will never open a
foreclosure in favor of a Volunteer.

If after mortgage forecloses (2 Vern. 235. 1 Vern. 148.
Sal. 276.) and afterwards devises the land to mortgage
and dies, the foreclosure is ipso facto opened in favor of
subseq^t. incumbrances.

Foreclosure is no (1 Eq. ca. 317.) satisfactⁿ of the bond - Therefore after foreclosure mortgage assigns or tues on the bond, this will open the foreclosure. Has been ruled in Conn S^t. that foreclosure is a satisfactⁿ of the bond. But this sentⁿ is not now consid^d. as law.

Disparity between the debt due & the value of the land is not alone good ground to delay granting foreclosure. All the circumstances of the case must be taken into considⁿ.

Notice

Notice is very important in the doctrine of mortg^s. There is two kind of notice - 1 Actual - as when one is party to a deed - & or is served with notice. But flying report is not actual notice, it is S^d. - Yet it is S^d. that any thing wh. is suff^t. to put one to inquiry &c. is suff^t. notice - But R. says he thinks that what is meant by this last rule is, that it must not only be such as to excite suspicion or enquiry, but also must be such as to enable him to find out the truth of the fact - to lead him to the place where the knowledge may be found. 2 Atk. 54. Ves. 387. 1 Atk. 490.

2 Constructive notice, is where there is such a set of facts conspiring as to afford convincing proof that notice has been given. Ex. J^s. devises land subject to legacies. Devisee if presumed to have notice of the legacies - he must know the contents of the Will. So a deed del^d. to a purch^r. containing charges upon the land. 2 Ves. 486. Pow. 271. 266.

1 Vern. 319.
2 H. 662.
2 Eq. ca. ab.
Gill. R. 9.

D. That where B has been upon A's land for a long time is notice sufft. to C. that B has some lien upon the land.

1 Ves. 61-9.

Notice to one's att^{ty} is notice to himself —
And notice to one, who acts as att^{ty} (tho he is not one), if
A afterward ratifies his acts, is also good — he is A's att^{ty}.
to all appearances — holds himself out as such to the world,
and A has by ratifying his acts, ^{declared} virtually ~~made~~ him such.

2 Atk. 477.

11-485.

It is quite a question whether there can be such a
thing as tacking incumbrances in the States where title
deeds, & Ex^{ors} lived on land, are required to be recorded.
If registering deeds is constructive notice to subseqt. incum-
brancers & purchasers, then there can be no tacking; for
no one can tack a subseqt. to a prior mortgk who had notice
of the intervening mortgk. In Eng. registering is not construc-
tive notice; but in this country I suppose it would.

Corp. 71.2.

1 Ves. 64.

Str. 664.

3 Atk. 446.

2 Atk. 275.

A subseqt. purch^r or mortgk will hold agt. a
prior vol^{ty} convey^{ance} or mortgk, even tho he knew of the prior
vol^{ty} conveyance — 127 Eliz. Corp. 284. 1 Eq. ca. at. 384. Corp. 711.

Rule — If one purch^r of a prior incumbrancer with
notice, and then sells to a stranger having no notice, the
grantee without notice is not affected by the notice his gran-
tor had.

July 2nd 1864. I have just received from Mr. [illegible]
a copy of your letter of the 28th inst. in relation to the
[illegible]

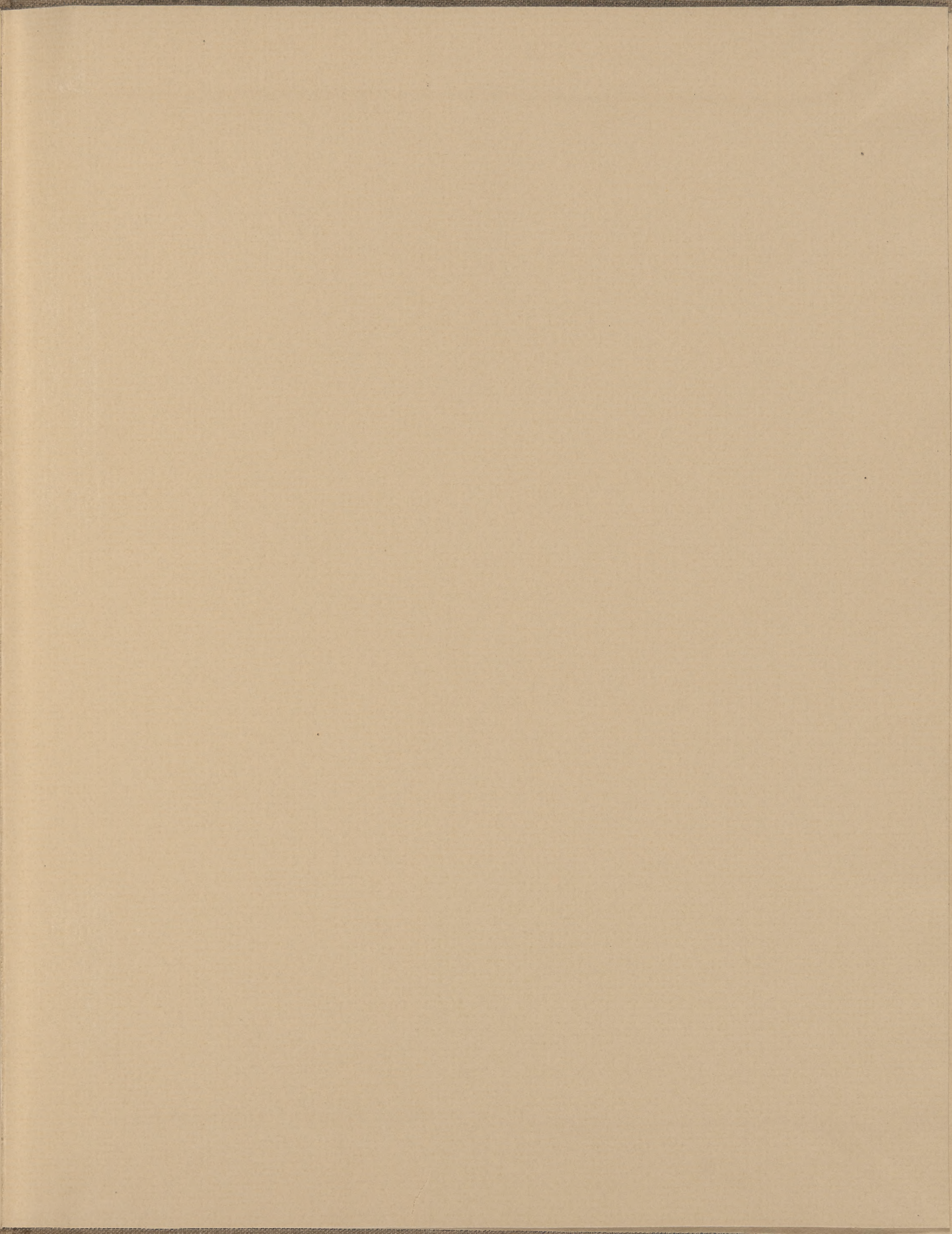
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